BY Vertue of an Order to me granted by the Lords Spiritual and Temporal in Parliament Aſſembled, dated on *Thurſday* the 28th of *Octob.* 1680; I do appoint *Randal Taylor*, near *Stationers Hall*, to Print this Trial of *Roger* Earl of *Caſtlemaine*, and that no other Perſon or Perſons print the ſame.

London, *Januar.* 12. 168$\frac{2}{1}$.

JO. COMBE.

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JO. COMBE.

THE TRYAL OF ROGER EARL of CASTLEMAINE FOR High Treason,

In Conspiring the Death of the

KING,

The Subversion of the Government, and Introducing of *Popery* and *Arbitrary Power.*

BEFORE

The Lord Chief Justice *SCROGGS, &c.*

At the *KING's BENCH* Bar at *Westminster*, the 23th *June* 1680:

Where he was Acquitted.

LONDON,
Printed for *S. G* and *N. E.* and are to be sold by *Randal Taylor* near *Stationers-Hall*, 1681.

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THE TRYAL OF ROGER EARL of CASTLEMAINE.

ROGER PALMER Esq; Earl of *Castlemaine* in the Kingdom of *Ireland*, having been Arraigned at the *Kings Bench* Bar the Sixteenth of *June* 1680, for High Treason: To which he Pleaded *Not Guilty*, &c.

On Wednesday the 23th of *June* 1680, being appointed for his Trial, the Court being sate, and the usual Formalities perform'd, the Lieutenant of the *Tower* delivered him into Court, and then the said Court proceeded as followeth.

Clerk of the Crown, Cryar, Make Proclamation.

Proclamation for ſilence.

Cryer, O yes! Our Soveraign Lord the King doth ſtrictly charge and command all manner of Perſons to keep ſilence upon pain of Imprisonment.

O yes! If any one can inform our Soveraign Lord the King, the Kings Serjeant at Law, the Kings Attourney General, or this Inqueſt, now to be taken of the High Treaſon, whereof *Roger Palmer* Eſq; Earl of *Caſtlemain* in the Kingdom of *Ireland*, ſtands Indicted, let them come forth and they ſhall be heard; for the Priſoner ſtands at the Bar upon his deliverance.

Clerk of the Crown, Cryer, Make an O yes.

Cryer, O yes! You good Men that are empannelled to enquire, between our Soveraign Lord the King and *Roger Palmer* Eſq; Earl of *Caſtlemain* within the Kingdom of *Ireland*, anſwer to your Names *Clerk of the Crown*, *Roger Palmer* Eſq; Earl of *Caſtlemain* in the Kingdom of *Ireland*, hold up thy hand. Theſe good Men that were lately called and now here appear, are to paſs between our Soveraign Lord the King and you upon your Life or Death, if you challenge any of them, you muſt ſpeak as they come to the Book to be Sworn, and before they are Sworn,

J U R Y.

Sir *John Cutler* Knight and Baronet.
Sir *Reginald Foſter* Baronet.
Henry Herriott Eſq;
Richard Cheney Eſq;
Thomas Johnſon Eſq;
John Roberts Eſq;
Francis Dorrington Eſq;
Hugh Squire Eſq;

Charles

Charles Good Esq;
John Pulford Esq;
Edward Claxton Esq;
Francis Mayhew Gent.

Cryer, O Yes, Our Soveraign Lord the King doth strictly charge and command all manner of Persons to keep silence upon pain of Imprisonment.

C. of the Crown. Roger Palmer Esq; Earl of *Castlemain* in the Kingdom of *Ireland*, hold up your hand.

You Gentlemen of the Jury that are now Sworn look upon the Prisoner and hearken to his charge.

You shall understand that he stands Indicted by the Name of *Roger Palmer* Esq; Earl of *Castlemain* in the Kingdom of *Ireland*; for that he as a false Traytor against our most Illustrious and Excellent Prince and Lord, *Charles* the Second, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. and his Natural Lord; not having the Fear of God before his Eyes, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, his Cordial Love, true due and Natural Obedience, which true and Faithful Subjects of our said Soveraign Lord the King ought to bear towards him, altogether withdrawing, and contriving, and with all his might intending, to disturb the Peace and common Tranquility of this Kingdom, and to bring and put our Soveraign Lord the King to Death and final Destruction, and alter the true Worship of God within this Kingdom established to the Superstition of the Romish Church, and to stir up and move War against our said Soveraign Lord the King within this Realm of *England*, and to subvert the Government thereof, the Twentieth day of *June* in the Thirtieth Year of the Reign of our said Soveraign Lord, *Charles* the Second, of *England*, *Scotland*, *France* and *Ireland*, King, Defender

of

of the Faith, &c. at the parish of St. *Giles in the Fields* in the County of *Midd.* with divers other false Traitors, to the Jurors unknown, did traiterously imagine and intend the killing, death and final destruction of our said Lord the King, and to change and alter and utterly subvert the Ancient Government of this Kingdom, and to depose and wholly to deprive our said Lord the King of his Crown and Government of this Realm of *England*, and to extirpate the true Protestant Religion: And to accomplish and fulfil the same most wicked Treasons and Traiterous Imaginations and Purposes aforesaid, the said *Roger Palmer* Esq; Earl of *Castlemain* in the Kingdom of *Ireland*, and other false Traitors, to the Jurors unknown, the same Twentieth day of *June*, in the Thirtieth Year aforesaid, with force and Arms, in the Parish of St. *Giles in the Fields* aforesaid, in the County aforesaid, Advisedly, Devilishly, Maliciously, and Traiterously, did assemble, unite, and gather themselves together, and then and there, Advisedly, Devilishly, Maliciously, Subtily, and Traiterously did consult and agree, to bring our said Soveraign Lord the King to Death and Final Destruction, and to deprive him of his Crown and Government of *England*, and to Introduce and Establish the Religion of the Church of *Rome* in this Kingdom; and the sooner to fulfil and accomplish the same most wicked Treasons and Traiterous imaginations and purposes aforesaid, he then and there did Falsly, Maliciously, and Trayterously promise divers great Rewards, and did pay divers Sums of Money to several Persons unknown; and then and there falsly and traiterously did write divers Notes, to incite several other Persons to accomplish the Treasons aforesaid, against the Life of our Soveraign Lord the King, his Crown and Dignity, and contrary to the form of the Statute in such Case made and provided.

Clerk of the Crown; Upon this Indictment he hath been Arraigned, and hath pleaded thereunto Not Guilty;

Guilty, and for his Tryal he puts himſelf upon God and his Countrey, which Countrey you are.

Your charge is to inquire, Whether he be Guilty of the High Treaſon whereof he ſtands Indicted, or not Guilty? If you find him guilty, you are to inquire, What Goods and Chattles, Lands and Tenements, he had at the time when the High Treaſon was committed, or at any time ſince? If you find him not Guilty, you are to ſay ſo and no more; and hear your Evidence.

Cryer, O yes, If any one will give Evidence on the behalf of our Soveraign Lord the King, againſt *Roger Palmer* Eſq; Earl of *Caſtlemain* in the Kingdom of *Ireland*, let him come forth and he ſhall be heard; for the Priſoner now ſtands at the Bar upon his deliverance.

Mr. *Bonithon*, May it pleaſe you my Lord, and you Gentlemen of the Jury, the Priſoner at the Bar ſtands Indicted for High Treaſon, for that he intended to diſturb the Peace within this Kingdom eſtabliſh'd, and to deſtroy and alter the Government, and to bring the King to Death and Final Deſtruction, and to alter our Religion to the ſuperſtition of the Church of *Rome*, did on the Twentieth day of *June* in the Thirtieth Year of the Reign of our Soveraign Lord the King, conſult and treat with ſeveral other Perſons, and that he with theſe Perſons, did agree to deſtroy the King and alter the Religion, and cauſe Rebellion; and further to accompliſh theſe Treaſons, he did promiſe and agree to pay ſeveral Accompts and depoſite ſeveral Sums of Money, and did likewiſe write and publiſh ſeveral Books.

To this he hath pleaded Not Guilty. If we prove theſe things, you are to find him Guilty.

Att. Gen. May it pleaſe your Lordſhip, my Lord *Caſtlemain* here ſtands *Indicted* for *High Treaſon*; that is, for *Deſigning to Murther the King and alter the Government and Law*; and this is but a parcel of the Plot, which hath been carrying on a great while, and many perſons tried for it; and ſome have ſuf-

fer'd and been executed for it. And, my Lord, we will give your Lordship *Evidence*, That my Lord *Castlemain* hath at several times conspired the *Death of the King*, and that he hath reproved persons for not doing it. And, my Lord, he hath been in Consults among *Jesuits*, where these Matters have been carried on, and this whole *Design* hath been negotiated. And my Lord *Castlemain* hath been consenting and agreeing to all these Matters. And, my Lord, when the *Trials* were in hand, it did appear upon those *Trials*, there were many persons brought from *St. Omers* to be Witnesses against Dr. *Oates*, to prove he was not in *England* at that time when he said in his Depositions that he did consult with the *Jesuits*; and these persons my Lord *Castlemain* had the management and instruction of at that time. And all along at the *Old Baily* my Lord *Castlemain* was present there, and did countenance these persons, and was an Intercessor for them. These are but Branches and Circumstances, what is material we will prove by Witnesses.

Att. Gen. Come Doctor *Oates*, Pray tell what you know.

Prisoner, My Lord, I have a long time wished for this day; and your Lordship may very well remember it. The reason why I have so much desired a *Trial*, is because I thought it a means, and the best means, and the only means to shew to the World my Innocency, and also to shew to the World how much I have been calumniated by this Charge.

L. C. J. What have you to say? Have you any thing to say against Doctor *Oates*?

Prisoner, No, my Lord. I only say this, here I am a Prisoner at the Bar, and I have pleaded Not Guilty, and throw my self upon this Court; and therefore I am very willing to hear what this man will say.

D. Oates, My Lord, I humbly move the Court, Whether or no, I may use my own Method?

L. C. J. Give your Charge, we direct nothing.

D. Oates, My Lord, In the year 1677, I was sent over

over into *Spain* by the *Jesuits* that were here in *England*; where I remained for several months, and transacted Business for them; and my Lord, I returned from *Spain* in *November*, and brought several Letters from some English Fathers there; among which there was one directed for my Lord *Castlemain*. My Lord, I did not deliver the Letter to him, but my Lord, the Contents of the Letter were to this effect ——

L. C. J. How came you to see the Contents?

D. Oates, My Lord, I was at the writing of the Letter, and so I did see the Contents of it.

L. C. J. Did the Priests shew it to you? Or did you only see it yourself?

D. Oates, No, my Lord; It was shewn me by them: And the Contents of this Letter were, That the Fathers in *Spain* were very zealous to concur with the Fathers here in *England* in the Design, which was the Subversion of the Government, altering the Religion, and the Destruction of the King.

L. C. J. Was that in the Letter?

D. Oates, No, my Lord, not in words at length.

L. C. J. What was, as far as you know, the very Expression of the Letter?

D. Oates, The word *Design*, my Lord.

L. C. J. Only that, to promote the Design?

D. *Oates*, Yes my Lord: And under that word we did comprehend all those things, that is, as we usually took it among one another.

L. C. J. Did you deliver this Letter to my Lord *Castlemain*?

D. *Oates*, No, my Lord, I did not deliver this Letter; but when I went to St. *Omers* we received an Account from my Lord *Castlemain* of his receipt of this Letter.

L. C. J. What did you do with it?

D. *Oates*, I left it with the Provincial, my Lord, who was then Mr. *Strange*.

L. C. J. Was it not given to you to give it him?

D. *Oates*, It was given me to give the Lord *Castlemain*,

main, but being then a ſtranger to him, I was willing to ſend one of his own Meſſengers with it.

L. C. J. Where was my Lord?

D. *Oates*, I can't tell, my Lord, I did not ſee him then. I went over to St. *Omers* in *December* 77, or the latter end of *November*.

L. C. J. Where were you when you gave this Letter to the Provincial?

D. *Oates*, I was in *London*, my Lord.

L. C. J. Where did you receive this Letter?

D. *Oates*, In *Spain*, My Lord, at *Valledolid*, of one *Armſtrong*.

L. C. J. Who was it directed to?

D. *Oates*, To my Lord *Caſtlemain*; but I did not then know him, and ſo I gave it the Provincial, my Lord, I went over to St. *Omers* in the latter end of *November* or the beginning of *December* 77, and after I had been there ſome few days, there did arrive a Packquet from *London* to St. *Omers*, in which there was a Letter from my Lord *Caſtlemain*.

L. C. J. To whom?

D. *Oates*, To the Fathers of the Society of St. *Omers*, in which my Lord *Caſtlemain* gave them an Account of a Letter that he had lately received from *Spain*.

L. C. J. How did you know the Contents of this Letter;

D. *Oates*, My Lord, I was Privy to their Letters.

L. C. J. Was you acquainted with my Lord *Caſtlemains* hand?

D. *Oates*, My Lord, I will give you an Account of that, I did not know it then, but only as it was generally ſaid among us.

L. C. J. How was it ſubſcribed?

D. *Oates*, *Caſtlemain*, My Lord, and ſometimes, my Lord, he ſubſcribed himſelf *Palmer*.

L. C. J. How many Letters have you ſeen?

D. *Oates*, Several Letters,

L. C. J. Was this the firſt?

D. *Oates*. This was the firſt as near as I can remem-

ber.

ber. And, my Lord, he gave an Account in that Letter, that he had received a Letter from *Spain*, and was glad the Fathers in *Spain* had so good an Opinion of his Integrity in the Cause.

L. C. J. Did he say from whom he had received it?

D. *Oates*, My Lord, I can't remember that, that he had received a Letter I am certain.

L. C. J. Do you know what the purport of the Letter was?

D. *Oates*, Yes, my Lord, I will give you a plain Account. My Lord, he wrote he had received a Letter from *Spain*, and that he was glad the Fathers in *Spain* had so great confidence in his Integrity. And, my Lord, in *March* there came another Letter from my Lord *Castlemain*: for my Lord *Castlemain* had left some things at *Leige*, wherein he did complain of the Fathers, that they made no more haste for to send his things to him; some odd things he had left there, and, my Lord, he gave an Account of a certain Letter he received from the Rector of *Liege*, whose Advice he did not like, for the Rector of *Leige* and the Rector of *Gant* were mighty Zealous that the Secular Clergy should be personally present in this Affair.

L. C. J. Did he write so? I would have you say what he writ.

D. *Oates*, My Lord, I have told you, he gave an Account that he was unwilling to have the secular Clergy engaged, because they were a loose sort of Men, and of no Principles, and therefore he thought them not fit to be trusted. My Lord, in *April* there was a Consult: I came over from St. *Omers* in *April*, some three or four, or five daies before the Consult, I am not able to guess at the particular time, but it was near upon the Consult. My Lord, this Consult was divided into several Companies after they had met at the *White-Horse* Tavern, wherein they did some things that did relate to the Order, as to send Father *Cary* to *Rome*. After that they divided themselves into several Companies, wherein they did agree in ordering the Death of the King.

L. C. J. You were by?

D. *Oates*, My Lord, I was imployed by them to give an Account of the Sense of one company to another.

L. C. J. Were you by when they concluded the Death of the King.

D. *Oates*, Yes, my Lord, I was then present.

L. C. J. Did you sign among the rest?

D. *Oates*, My Lord, I don't come here to accuse my self.

L. C. J. You are Pardoned if it be so.

D. *Oates*, My Lord, I did consent. My Lord, In this consult they met together, and an Oath of Secrecy was administred, my Lord *Castleman* was there too within some few days after the Consult, that is, the Gentleman whom I accuse for Treason, I say, did come, and enquired about the Copies of some Letters for to be sent up into *Germany*, and did desire that an Agreement between them and the Monks might be made up, there being a difference between them, so that they might have the Assistance of that Order to carry on the Design.

L. C. J. What Gentleman was this?

D. *Oates*, It was the Prisoner, my Lord, at the Bar.

L. C. J. Would the Gentleman let you hear him say, that he desired Assistance to carry on the Design, and you a stranger to him?

D. *Oates*, My Lord, I do not think I was a stranger to him so much as he was a stranger to me, he knew I was their Servant and employed by them.

L. C. J. Would he say in your hearing, that he desired their Assistance to carry on the Design, and you did not know him?

D. *Oates*, My Lord, I did not well know him at that time, and I brought several Messages from the Fathers, and from Mr. *Langhorn*, and I gave them an Account before him.

L. C. J. How often had you seen him?

D. *Oates*, That time he was there, my Lord.

L. C. J. How many Messages had you?

D. *Oates*, I will tell your Lordship where I had been,

I had been at Mr. *Simmonds's*, who was then Confessor to the Earl of *Aurundel*, who is since turn'd Protestant; Confessor to him as he pretended, and we looked upon him to be. And I had been at Father *Cain's*, who was in *Turnmill-street*, and I had been, my Lord, at Mr. *Langhorn's* in the *Temple*, and some other places which I do not now remember, it is so long since. So, my Lord, I gave them Account of my business, and I did see that Gentleman, but did not know his Name, till, my Lord, in *June*.

L. C. J. When was this?

D. *Oates*, This was, my Lord, as near as I can remember in *May*.

L. C. J. So you did not know his Name till Three Weeks or a Month after?

D. *Oates*, No, my Lord, It was in the latter part of *June*.

J. Jones, You saw him first in *May*?

D. *Oates*, Yes, my Lord.

J. Jones, And you did not see him till after the Consult? I don't ask you whether he was there or no, but whether you saw him before the Consult was Signed?

D. *Oates*, No, my Lord.

L. C. J. How did you come to know his Name?

D. *Oates*, My Lord, In *June* Mr. *Langworth* and I were going over *Lincolns-Inn-Fields*, intending to go to the *Fountain* in *Fullers Rents*, because there was a sort of Drink that he loved, and we were to drink together, it was in the Evening, and so in our way as we went, we met with my Lord *Castlemain*, whom Mr. *Langworth* did salute, and then we came back to Mr. *Fenwick's* Chamber.

L. C. J. With whom did you come back?

D. *Oates*, With my Lord *Castlemain*.

L. C. J. Did you know his Name?

D. *Oates*, Mr. *Langworth* told me, It was the Prisoner at the Bar, my Lord, and the Prisoner at the Bar was giving an Account of some Letters he had received out of the Countrey; and Mr. *Langworth* was giving him

him an Account how forward the Rector of *Leige* and the Rector of *Gant* were in offering to have the ſecular Clergy engaged with them, and ſome other Diſcourſe they had which I can't remember, but about the Deſign.

L. C. J. What did they talk of at that time? You muſt as near as you can tell us what Diſcourſe they had.

D. Oates, I will give your Lordſhip this, They were ſpeaking of the Tranſactions of the Conſult, and how unanimous the Fathers were in Signing the Conſult.

L. C. J. Who was ſpeaking of it?

D. *Oates*, Mr. *Langworth* and Mr. *Fenwick*, and my Lord *Caſtlemain* was preſent.

L. C. J. They did talk of it?

D. Oates, Yes.

L. C. J. Did they mention the particulars of that Conſult?

D. Oates, Yes.

L. C. J. What was that?

D. *Oates*, Laying aſide the King.

L. C. J. And what elſe?

D. Oates, And bringing in the Popiſh Religion, the Catholick Religion, I ſpeak their own words.

L. C. J. And this Diſcourſe they had in the hearing of my Lord *Caſtlemain*.

D. Oates, Yes; and my Lord *Caſtlemain* ſaid, *Now he ſhould be revenged for the Injuries done to him.*

L. C. J. Go on.

D. Oates, I have nothing elſe to ſay of my Lord *Caſtlemain*, that I can think of at preſent.

L. C. J. Now my Lord, you may ask him what Queſtions you think fit.

Priſoner, Mr. *Oates*, Repeat your Journey again.

D. Oates, My Lord, I ſay this, I went a Ship-board in *April*, I returned from *Valledolid* in *November*, I arrived in *London* in *November*, and ſtaid in *London* ſome time, and then I went to St. *Omers* in *November* or *December* new Stile or old Stile, I ſtaid at St. *Omers*, from thence I went to *Watton*, then, my Lord, in the

the Month of *March* we went to *Leige*, and returned back again: In the Month of *April*, we came hither, ſome time before the Conſult, and ſtaid here ſome time after.

Priſoner, What time were you at *Leige*, pray Sir?

D. Oates, In *March* 77.

J. Jones, The end of 77.

D. *Oates*, No, my Lord, we were at St. *Omers* again in *March*.

L. C. J. You returned in *March* $\frac{77}{78}$

D. Oates, Yes, my Lord, the Stile doth ſo alter.

Priſoner, That is before *Lady-day*?

D. Oates, Yes, my Lord, it was before *Lady-day*, we Arrived here in *London* in *May* or in *April*, and we ſtaid here ſome few days.

Priſoner, When did you come over again, pray Sir?

D. *Oates*, My Lord, it is now Two Years ago or better, and I can't remember every particular time. My Lord, we were here in *May*.

Priſoner, I will ask him as many Queſtions as I think reaſonable, and when, my Lord, I do deſire times and he can't tell the times, he muſt tell me ſo.

L. C. J. Mr. *Oates*, Anſwer my Lord what Queſtions he asks you.

D. Oates, I will tell my Lord *Caſtlemain* as near as I can remember, my Lord.

Priſoner, Mr. *Oates*, When was it you came over?

D. Oates, Really it was ſome few days before the Conſult.

Priſoner, How many days do you think?

D. Oates, Really I can't remember.

L. C. J. I ſuppoſe you have your Memorials.

D. Oates, Really, my Lord, no.

L. C. J. Have you any thing more to ask?

Priſoner, Yes, my Lord, a great many Queſtions. Were you preſent, Mr. *Oates*, pray, at that Conſult, when I conſented to the Kings Death? Was you by?

D. Oates, I was preſent at the Conſult; but I do not charge you to be at the Conſult.

L. C. J. He asks you where it was he agreed to it?

D. Oates, At Mr. *Fenwick*'s Chamber; I remember it was about Seven or Eight a Clock that we were going over *Lincolns-Inn-Fields*.

L. C. J. How long might you be at *Fenwicks*?

D. Oates, It was about 11 or 12 a Clock I came away.

Priſoner, When you met me in *Lincolns-Inn-Fields*, was I in a Coach or on Foot, or was any body with me?

D. Oates, I can't ſay whether your Lordſhip had a Man with you, or no.

L. C. J. Was there any body with him?

D. Oates, I did not take notice of that.

L. C. J. You were two hours together, pray let me ask you this Queſtion, What was your Diſcourſe about?

D. *Oates*, That was part of the Diſcourſe, my Lord.

L. C. J. What? You have given us a very ſhort Account of it in Four lines: You were two hours together, What was the main of your Diſcourſe about?

D. *Oates*, My Lord, I will give you as plainly as I can, the Diſcourſe at that time.

C. L. J. Pray let us know what the main of your Diſcourſe was about.

D. Oates, One part of their Diſcourſe was about the Revenues of their Colledges, and how they had ſuffer'd by the *French*'s taking St. *Omers*, and what loſſes they had ſuſtained by reaſon of the change of Government by the Conqueſt; for the Crown of *Spain* had entailed on the Colledge of St. *Omers* Five or Six Hundred a Year, for the maintaining the Foundation of their Houſe, or Foundation Rent, and it was taken away by reaſon of the Conqueſt that *France* had made over the Spaniſh Dominions there; and they were conſulting how they ſhould Write to Father *Le Cheſe* to be an Inſtrument to move the *French* King to reſtore this Annuity, that was a Settlement entailed upon it.

L. C. J. How came you into this Diſcourſe?

D. *Oates*, This was after the other Diſcourſe.

L. C. J. How came you to Diſcourſe this Affair here in *England*?

D. Oates,

D. Oates, I will tell your Lordſhip as near as I can remember: When we met in *Lincolns-Inn-Fields*, Mr. *Langworth* recommended me to my Lord *Caſtlemain*, and bad me take notice of him. I can't ſay this is my Lord *Caſtlemain*, but this is that Man I ſaw.

L. C. J. Did he call him by his Name?

D. Oates. He told him that I was ſuch a one, and that I was ſerviceable to them. And upon our way as we went to Mr. *Fenwick*'s Chamber, he inquired into the Cauſes of my coming over ſo ſoon again, for he ſaid I went over but laſt Month. Said he, *How came it to paſs he came over ſo ſoon again?* Saith he, *We wanted him to do ſome buſineſs for us.* And there were more particulars of the Tranſactions of the Conſult mentioned to my Lord *Caſtlemain.*

L. C. J. How did they bring in the Particulars of that Deſign?

D. *Oates*, This is as near as I can remember.

L. C. J. How came they to talk of laying aſide the King and bringing in the Catholick Religion?

D. *Oates*, My Lord, After they had given an Account of the Tranſactions of the Conſult: This was one part of the Conſult.

L. C. J. Pray how came they to bring it in, in Diſcourſe?

D. *Oates*, My Lord, they ſpake of the particulars of it.

L. C. J. I wonder what introduced the particulars: Was it to acquaint him with thoſe particulars?

D. *Oates*, My Lord, I have nothing to ſay to that, they were things ſo generally talked of by thoſe of the Jeſuitical party, that when ever they met, they ſcarce did talk of any thing elſe but of that, and ſo they did at this time.

L. C. J. Pray tell me the whole diſcourſe, as you can remember, that relates to this time.

D. Oates, My Lord, I have told your Lordſhip, we met with my Lord *Caſtlemain* in *Lincolns-Inn-Fields.* I have told you, my Lord, that we went to Mr. *Fenwicks*, I have told you, my Lord, that after ſome

Diſcourſe

Diſcourſe (how it was introduced; I cannot be poſitive, but as near as I can remember) they were ſpeaking of my going over and coming again ſo ſoon, my going from the Conſult to St. *Omers* and returning again into *England* ſo ſoon, and ſo one word brought in another.

L. C. J. Did you know then that my Lord *Caſtlemain* had ever heard of this matter before?

D. Oates, My Lord, I don't know; but I am morally certain as to my ſelf; but I can't ſwear he did?

Att. General, Did he ſpeak of it to him as a ſtranger to it?

D. *Oates*, No.

J. Jones, By the Letter you ſpake of he knew before.

L. C. J. Anſwer my Brother's Queſtion, Was the Letter you had ſeen, before or after that Diſcourſe at *Fenwicks*?

D. *Oates*, My Lord, that was after the Conſult.

L. C. J. Then you know he did know of the Deſign?

D. *Oates*, My Lord, I think not of the particulars of the Deſign.

L. C. J. That is, he knew of this Deſign for the main. When you talk of the Deſign you always mean the Conſult?

D. *Oates*, No, my Lord, when we ſay the Conſult, we mean what was agreed on at that Conſult, not concerning theſe matters that were done Six Months before.

L. C. J. Mr. *Oates*, Tell me when you mention the Deſign and the Conſult. Do not you alwaies mean the Death of the King and the bringing in Popery?

D. Oates, Yes, my Lord, but the terms are not convertible: For, my Lord, when we ſay the Conſult, there was ſomething elſe done, my Lord, as that Conſult which had not an abſolute Relation to the Deſign, and of that I will give your Lordſhip one inſtance, as the ſending Father *Cary* to *Rome*, which they did in ſome Three Years.

L. C. J. Some trivial matters concerning their own Government, but the thing you talk of is the ſame Conſult and Deſign.

D. *Oates*,

D. *Oates*, When I ſpeak of the word Deſign, it was ſo taken among us, and ſo received by my Lord *Caſtlemain*.

L. C. J. How can you ſay it was ſo received by him?

D. *Oates*, Becauſe he uſed the ſame word, and anſwered us according to our Interpretation.

J. Jones, My Lord, he ſpeaks of the Deſign thus, There was a Deſign for the Killing the King, there was a Deſign of the Prieſts and Fathers for it; but, ſaith he, *Afterwards there was a general Conſultation*, and this Deſign came to be form'd by this general Conſult, which my Lord *Caſtlemain*, as he thinks, had no knowledge of till the time they met together in *Lincolns-Inn Fields*, and afterward went and diſcours'd about it.

L. C. J. It is very fair, that he doth not know that my Lord *Caſtlemain* had any knowledge before the Conſult of this buſineſs; but, he ſays, *The Deſign upon which the Conſult was, that he might know, which was to deſtroy the King, and bring in Popery.* And he ſays, My Lord *Caſtlemain* did underſtand this word Deſign in that ſenſe they did; becauſe he anſwered their Letters according to their Interpretation of it. How do you know he underſtood the word Deſign in its utmoſt capacity as you underſtood it?

D. *Oates*, When we have our Words, we have our Keys whereby we underſtand them. But I will anſwer this Queſtion to the ſatisfaction of the Gentlemen of the Jury. My Lord, he hath many times ſpoken in his Letters of introducing the Popiſh Religion, and annext it to the word Deſign of promoting the Catholick Religion here in *England*.

L. C. J. Now methinks you have brought the word Deſign to ſomething elſe than Killing the King.

D. *Oates*, Yes, my Lord, The Subverſion of Religion and the Government.

L. C. J. Did he put in Government? Did he talk of bringing in the Catholick Religion and altering the Government.

D. Oates, No, my Lord, I won't ſay that.

L. C. J. When we are examining concerning Mens lives, we muſt be careful of their words in ſuch matters.

D. Oates, One part of my Evidence I have omitted, Your Lordſhip did ask me how I came to know my Lord *Caſtlemain's* hand. My Lord, ſometimes we received Letters from him ſubſcribed *Palmer*, and ſometimes ſubſcribed *Caſtlemain*, ſometimes ſome other Name which I may not remember; and they were generally received as from him. And I have ſeen my Lord *Caſtlemain* write, for that Night, as near as I remember, it was Poſt-night.

L. C. J. At *Fenwick's* Chamber?

D. Oates, At *Fenwick's* Chamber, and my Lord *Caſtlemain* did write a Letter, ſubſcribed it and ſealed it, and I was fain to go to the General Poſt-Houſe, it was ſo late.

J. Jones, What did he ſubſcribe then?

D. Oates, No, my Lord, I ſaw no more than the Superſcription.

L. C. J. Then you did not ſee his Name to it?

D. Oates, No, my Lord. My Lord *Caſtlemain* did ask, Why he had not Anſwers to ſuch and ſuch Letters? For ſeveral Letters I had ſeen which were not of much moment.

L. C. J. I wiſh you had one that was of moment.

D. Oates, It cannot be expected, my Lord, that I ſhould have them.

L. C. J. My Lord, ask him what you pleaſe.

Priſoner, You ſay, Mr. *Oates*, you received Letters from me in *Spain*.

D. Oates, I never ſaid ſo.

Priſoner, You ſaw Letters in *Spain* from me?

D. Oates, Yes, I have ſeen Letters in *Spain* that were from you.

Priſoner, Look you, Mr. *Oates*, Pray let me ask you a Queſtion, you ſaid this, That you did not know me when you met me at the Conſult?

D. Oates, What Conſult?

Priſoner, At *Fenwick's* Chamber.

D. Oates,

D. Oates, I did not know you at *Wild-house*.

Priſoner, There you met me firſt.

D. Oates, There I met the Priſoner at the Bar.

L. C. J. He ſays he did not know you at *Wild-houſe*, but he came to know you by *Langworth* in *Lincolns-Inn-Fields*, and then you went together to *Fenwick*'s Chamber.

Priſoner, Mr. *Oates*, Did not you ſay, that at *Wild-houſe* you did not know me, nor I you?

L. C. J. He ſays he can't tell whether you knew him or no, but he did not know you.

Priſoner, Was I familiar with you?

D. *Oates*, No, my Lord.

Priſoner, Did I talk Treaſon at *Wild-houſe*?

D. Oates, It was the Diſcourſe of the day, but I do not remember every particular of the Diſcourſe, but I remember what your Opinion was concerning the Rector of *Liege* and the Rector of *Gant*.

Priſoner, Was there any thing about killing the King at *Wild-houſe*?

D. Oates, Really my Lord, I can't remember, I wont charge it there becauſe I am upon my Oath; though I morally believe, as to my ſelf, that there was diſcourſe bad enough there.

Priſoner, Mr. *Oates*, Pray will you hear me, then the acquaintance I had with you was by Mr. *Langworth*, and then we went that Night to *Fenwick's* Chamber, and there we ſtaid very long, and there we had all this Diſcourſe?

D. Oates, Yes.

Priſoner, Look Mr. *Oates*, Was there any by beſides Mr. *Langworth* and Mr. *Fenwick*?

D. Oates, Really, my Lord, I don't remember any body was by, unleſs a Maid might come to fill a Cup of Drink or ſo.

Priſoner, Mr. *Oates*, Pray Mr. *Oates*, did you and I ever meet together after that time?

D. Oates, Really, my Lord, I can't be exact in that.

Priſoner, Did you never ſee me nor Diſcourſe with me after that time?

D. Oates,

D. Oates, I cannot recollect my ſelf as to that I cannot remember.

L. C. J. He does not remember that ever he was with you afterwards?

Priſoner, You don't know whether ever I diſcours'd with you afterwards?

D. *Oates*, I don't remember.

Priſoner, Very well, Mr. *Oates*, Look you, Sir, you don't remember that I ever had any Diſcourſe with you after that time; and no body was by but Mr. *Fenwick* and Mr. *Langworth*?

D. Oates, As I remember.

Priſoner, Was not there another Prieſt there?

D. *Oates*, There is no body occurs to my Memory.

Priſoner, Mr. *Oates*, you brought me Letters from *Spain*.

D. *Oates*, I brought a Letter from *Spain* directed to you in 77.

Priſoner, Was I in Town or out of Town?

D. *Oates*, I delivered it to the Provincial.

Priſoner, You went over to *Liege*; did not you ſee me there?

D. *Oates*, No, my Lord, I did not ſee you there, I only went to wait upon a Gentleman that was a Prieſt afterwards, that went to take orders.

Priſoner, Did you not ſee me at *Liege*?

D. Oates, No, my Lord.

Priſoner, You were at *Liege*, did you ſtay there?

D. Oates, I lay there one Night.

Att. General, Have you any thing to ask, my Lord?

Priſoner, Preſently, my Lord.

J. Jones, It is very reaſonable my Lord ſhould queſtion you. You own him to be the Lord *Caſtlemain*, When was it you did firſt diſcover this buſineſs concerning my Lord *Caſtlemain*?

D. *Oates*, My Lord, I did diſcover my Lord *Caſtlemain* to be in the Plot, the Laſt Seſſions of the Long Parliament, and I accuſed my Lord *Caſtlemain* this *Trinity Term* was Twelve Months, and my Lord *Caſtlemain* was committed: for when Mr. *Dangerfield* came

came in and accuſed my Lord *Caſtlemain*, I brought a Charge a ſecond time againſt my Lord *Caſtlemain*.

J. Jones, Did you diſcover all this then?

D. Oates, I did charge him for having an hand in the Deſign in general.

J. Jones, To the Parliament?

D. Oates. Yes, to the Parliament.

Priſoner, You ſay when I aſſented to the Kings Death in *Fenwick*'s Chamber, that I ſaid, I ſhould now find a time to be reveng'd.

D. *Oates*, Pray, my Lord, don't put me to mention ſuch reflecting Evidence.

Priſoner, When you were before the King, you did in purſuance of this ſpeak of a Divorce.

D. Oates, My Lord, I will give Evidence as to that if that my Lord comes to be Indicted for his Prieſthood.

L. C. J. My Lord may ask what Queſtions he ſhall think fit.

Att. General, My Lord ſays he has ſaid it, and what he ſaid in another place he is not to treat now of.

Priſoner, Suppoſe I can prove him an Ill Man in any place, is not that fit to be ſpoken of here? Since he hath brought the King upon the Stage, and ſince he hath accuſed me before the King and your Lordſhips of a Devorce, I ask him whether he ſaw it?

D. *Oates*, I will tell your Lordſhip what I ſaid as to the Divorce, I heard it diſcours'd of generally among the Fathers beyond Sea, and this was ſome other part of the Diſcourſe at *Wild-houſe*; and I heard my Lord *Caſtlemain* ſay that he had been at great charg to carry on that buſineſs of the Divorce.

Priſoner, At *Wild-houſe*?

D. *Oates*, At *Wild-houſe*. Now, my Lord, I took no notice of it, becauſe it was not my buſineſs. But, my Lord, after that there was a Prieſts Chamber that was ſearched, and there was the whole Caſe ſtated; now what is become of the State of that Caſe, my Lord, I cannot tell.

L. C. J. By whom was that Caſe ſtated?

D. *Oates*, There was a Letter found, whereby my Lord *Caſtlemain* ſhould have the matter directed, in order to the carrying on the Divorce that was to be between him and his Wife *Barbara*.

Priſoner, Did not you tell the King that you ſaw the Divorce in *Strange*'s hand?

D. *Oates*, My Lord, I will tell you this, I gave an Account to the King, that I ſaw in *Strange*'s hand an Account of a Divorce that was between my Lord *Caſtlemain* and *Barbara* Dutcheſs of *Cleaveland*.

Recorder, My Lord, if he ask too many Queſtions that don't relate to this matter, it is impoſſibe to give an Account of every particular.

Priſoner, My Lords, I humbly ſubmit this Caſe.

Recorder, Ask him what you ſaid to ſuch a man upon the Ninth of *Auguſt* was Twelve Month, muſt he give an Account?

L. C. J. He muſt ſay he does not know.

Recorder, Indeed it is reaſonable that my Lord *Caſtlemain* ſhould ask him ſome queſtions, and that Mr. *Oates* ſhould give him an Account.

Att. General, My Lord, will you give me leave to ſpeak? If he may ask queſtions about ſuch forreign matters as this, no man can juſtify himſelf.

L. C. J. This is not ſo mighty remote but uſe may be made of it.

Att. General, If he ſhould ask whether he were ſuch a day at ſuch an houſe, and tell him yes, and miſtake the day; any man may be catch'd thus.

Priſoner, How can a man be catch'd in the Truth?

Att. General, My Lord *Caſtlemain* may, if he can, catch him in any thing he gives in Evidence here.

Priſoner, My Lord, if your Lordſhip over-rule me, I will ſay no more. Mr. *Attorney* ſays I come to catch him, I confeſs I do.

Att. General, You ſhould not ask him Forreign Queſtions.

L. C. J. He asks a plain Queſtion, why do you labour ſo much that he ſhould not ask, Whether he had ſeen the Divorce? My Lord *Caſtlemain*, I have askt the queſtion

queſtion for you, Whether or no he ſaid he had ſeen the Divorce? and he does not remember whether he ſaid ſo or no.

Att. General, My Lord, I think with your Lordſhips leave, that he is not bound to anſwer Queſtions, that are not to the Evidence.

L. C. J. If ſo be he would come to make Application, it may be well enough.

Att. General, I ſay it for the Method of the Evidence, my Lord, that I would not have theſe Excurſions.

Priſoner, I deſire your Lordſhip that I may ſay out what I have to ſay. I ſay this, that no man in the World that ſpeaks truth can be catch'd, neither will Mr. *Atturney* ſuffer me to catch him.

Att. General, I ſay you have liberty to catch him in any thing that doth belong to the Evidence.

Priſoner, I come to ſhew you the fitneſs of it to this Affair. He comes and tells you, among other Conſults, of *Wild-houſe*, and my meeting him in *Lincolns-Inn-Fields*, the recommendations of Mr. *Langworth*, and going to *Fenwicks* Chamber, where we talk'd of altering the Government, and my aſſenting to kill the King: and ſince you have brought the King upon the Stage, I will refreſh your Memory a little, ſince you talk of revenging my ſelf, look you if you did not mention a Divorce to the King and alſo to my Lord Chief Juſtice.

Att. General, My Lord, you are under a miſtake.

Priſoner, Pray give me leave, Mr. *Atturney*.

Att. General, You make ſuch Excurſions into Forreign Matters.

Priſoner, Mr. *Oates*, you did ſay you ſaw a Divorce, I ask you whether you ſaw a Divorce, and where, or whether you ſaid ſo?

L. C. J. He ſays, he does not remember he ſaid ſo.

D. Oates, I do not remember whether I ſaid ſo or no, my Lord, I have it down: but indeed I did not let my thoughts a-work.

Att. General, He hath given you an Anſwer that may ſatisfie you.

J. Rey-

J. Raymond, He hath Papers wherein he hath entred Memorandums to refresh his Memory, but these Papers he hath not by him.

L. C. J. Then he may say he hath not.

Att. General, That he hath already, my Lord.

L. C. J. Have you any more to say?

Prisoner, I have, my Lord, if you will give me leave to write down two words.

Prisoner, Mr. *Oates*, You told my Lords the Judges that I did say, I was at great expence about a Divorce.

Dr. *Oates*, Yes,

Prisoner, That is very well, Mr. *Oates*.

Att. General, Call Mr. *Dangerfield*.

[D. Oates *was going out of the Court.*

Prisoner, May Mr. *Oates* go out of the Court.

Court, Yes, yes.

D. *Oates*, I will be within call, my Lord.

Prisoner, I only submit it to your Lordships, Whether or no a Witness may go out of the Court?

D. Oates, I will stay then.

Att. General, Swear Mr. *Dangerfield*.

Prisoner, Pray stay.

L. C. J. Why so?

Prisoner, Here I am a Prisoner, my Lords, and submit it to your Lordships, Whether or no Mr. *Dangerfield*, who hath had the Censure of this Court, may be a Witness? Whether or no Council shall shew reasons to your Lordship, whether he may speak or no.

J. Jones, You must shew your Exceptions that you have against him.

Prisoner, My Exception is this, That he was convicted of Felony, that he broke Prison, and was outlawed upon it. Besides this, my Lord, he is a Stigmatick, hath stood in the Pillory and was burnt in the hand. Now I humbly beseech your Lordships, that you will be pleased to hear what my Council can say, and then, my Lords, if you over-rule, I shall give place with all my heart.

L. C. J. I think it reasonable, if you desire Council, that they should be allowed to speak.

Att.

Att. General, If your Lordship pleafe to hear my Lords Exceptions appear.

J. Jones, What are your Exceptions, my Lord?

Prisoner, That I told you before-hand, he is an outlawed person, he is convicted of Felony.

J. Jones, When was he outlawed?

Att. General, In the 17th Year of the King, and we say he hath a Pardon in the 20th Year of the King.

L. C. J. How do you prove he was burnt in the Hand, my Lord?

Att. General, When was he burnt in the Hand?

Prisoner, Call *Briscoe*.

Att. General, We bring a Pardon unto that, and that will restore him.

[*A Record produced.*

Att. General, That Record we confess, shew the Pardon, shew the Pardon.

L. C. J. Now go to that for which he was burnt in the hand.

Att. General, Here is a Pardon that extends to them all.

[*The Pardon Read*; Decimo tertio die Januarii Anno Regni, &c.

L. C. J. This does not do it.

Att. General, Yes, my Lord, it does.

L. C. J. Is that the *Newgate* Pardon?

Att. General, Yes, my Lord.

L. C. J. We have had it in the Court.

Att. General, Yes, my Lord.

L. C. J. And Felony and Outlawry is in it.

Att. General, Yes, my Lord.

L. C. J. Where is that for which he was burnt in the hand?

Att. General, For that we give an Answer, he was received to the benefit of his Clergy, and he was burnt in the hand, and his Pardon is after that too.

L. C. J. So it is.

Att. General, If your Lordſhip pleaſe, when my Lords Exceptions appear.

J. Jones, What are your Exceptions, my Lord?

Priſoner, That I told you before-hand, he is an outlawed perſon, he is convicted of Felony.

J. Jones, When was he out-lawed?

Att. General, In the 27th. Year of the King, and we ſay he hath a Pardon in the 30th Year of the King.

L. C. J. How do you prove he was burnt in the Hand, my Lord?

Att. General, When was he burnt in the Hand?

Priſoner, Call *Briſcoe*.

Att. General, We bring a Pardon unto that, and that will reſtore him.

[*A Record produced.*

Att. General, That Record we confeſs, ſhew the Pardon, ſhew the Pardon.

L. C. J. Now go to that for which he was burnt in the hand.

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Att. General, For that we give an Anſwer, he was received to the benefit of his Clergy, and he was burnt in the hand, and his Pardon is after that too.

L. C. J. So it is.

Att. General, Then his Pardon anſwers them all.

L. C. J. Now you ſee, my Lord, you think *Dangerfield* ought not to be a Witneſs, who hath gone through ſo many Punishments, out-lawed for Felony, and burnt in the hand for Felony; Mr *Atturney* makes Anſwer, we have a Pardon, and by that he is reſtored, as he ſays, to be a Witneſs again. If you deſire Council to ſpeak to this point, Whether or no a man branded and burnt in the hand for Felony, and afterwards is pardoned, is capable of being a Witneſs? I ſee no reaſon to deny it you.

Att. General, If there be matter for Council to ſpeak in that Caſe, we muſt ſubmit, if your Lordſhip make it a doubt.

L. C. J. I do for my own part; in this I am clear, if a Man were Convicted of Perjury, that no Pardon will make him a Witneſs, becauſe it is to do the Subject wrong. A Pardon does not make a Man an Honeſt Man, it takes off reproaches; and the Law is wiſe in that, the Law will not ſuffer endleſs contumelies to be heaped upon Men, nor to be call'd perjured Raſcalls, and ſuch things. It is only to prevent upbraiding Language, which tends to the breach of the Peace. But in my Opinion, if a Man ſtands Convicted in Court, for Perjury, no Pardon can ever make him a Witneſs and ſet him upright again. But that is a different Caſe from this, we are upon this ſingle Caſe, Whether a Man that is burnt in the hand for Felony, whether a Pardon can ſet him right or no? For this I make more doubtful than the other: for a Man may be, that hath committed a Robery, would be afraid to forſwear himſelf; for though one is a great, the other is a greater Sin, and that in the Subject matter; which conſidered, I think it reaſonable to allow my Lord Council to ſpeak to that ſingle point, That a Perſon being burnt in the hand for Felony, and afterwards Pardoned, whether he is capable of being a Witneſs?

Priſoner, Then I do name Mr. *Jones*, Mr. *Saunders*, and Mr. *Darnal*.

L. C. J.

L. C. J. Very well.

[*Mr.* Saunders *was call'd, but was not in Court.*

L. C. J. Are you prepared, Mr. *Jones*, to ſpeak?

Mr. *Jones*, No, my Lord.

J. Jones, My Lord, do you except againſt that one particular?

Priſoner, I ſtand upon both; his being Pillored and Burnt in the hand.

L. C. J. Will you admit that he ſtood in the Pillory?

Att. General, I know nothing of it.

L. C. J. I will tell you, my Lord, you will ſee whether it be neceſſary to protract this or no; for your Council will hardly undertake to argue unprepared about this Point, and if the Tryal ſhould be Adjourn'd, it would be very troubleſome. I think it the duty of my Place to diſcharge my Conſcience for you and againſt you as the matter ſhall fall out; and if ſo be that you ſhould inſiſt upon it, and he be capable of being a Witneſs, ſuppoſing it ſo; yet I muſt ſay, you may give in the Evidence of every Record of the Conviction of any ſort of Crimes he hath been guilty of, and they ſhall be Read. They ſay laſt day there were Sixteen, if there were an Hundred they ſhould be Read againſt him, and they ſhall all go to invalidate any Credit that is to be given to any thing he ſhall Swear.

Priſoner, My Lord, I humbly ſubmit my ſelf to your Lordſhip. Sixteen we have, I bring but Six. You ſhall have them Mr. *Atturney* when you pleaſe.

L. C. J. My Lord, if you think it worth your while to put it to Council, to argue, Whether he may be a Witneſs, or whether you think it may be as well for your, ſuppoſing he be a Witneſs, the producing thoſe things againſt him, or the Records of thoſe Crimes that he hath been Convicted of; whether that will be as well for you or no, I leave it to your ſelf to do as you think beſt?

Mr. *Darnal*, I conceive with ſubmiſſion to your Lordſhip that he cannot be a Witneſs.

L. C. J.

L. C. J. Are you prepared to ſpeak to it now?

M. *Darnal*, My Lord, I am ready to offer ſomewhat to your Lordſhip why I conceive he ought not to be Sworn: but I deſire firſt that the Pardon may be Read, becauſe many Perſons and Offences are comprized in it.

L. C. J. It is a Pardon for Felonies and Out-lawries of Felony in general.

Mr. *Darnal*, If the Perſons and their Offences are ſeverally and ſufficiently pardoned, then, my Lord, I will proceed unto the other Point.

J. Jones, The whole is good.

Mr. *Darnal*, Then, my Lord, I conceive, notwithſtanding this Pardon, Mr. *Dangerfield* ought not to be Sworn, and that no Perſon attainted of Felony (though Pardon'd) can be a Witneſs. My Lord, it hath been Adjudged in 11 *Henry* the 4th. *Quadrageſſimo primo*, that a Man Attainted of Felony (as Mr. *Dangerfield* is) though he be afterwards Pardoned, cannot be Sworn of a Jury. My Lord, the ſame queſtion hath been reſolved ſince, *In Nono Jacobi.* It is reported in Mr. *Brownlow*'s and *Goldsborough*'s Reports, *Folio Triceſſimo Quarto.* And my Lord *Cook* in Mr. *Bulſtrode*'s Second Reports, 154. In *Brown* and *Craſhaw*'s Caſe, is of the ſame Opinion. He ſays, A Man Attainted and Pardon'd, cannot ſerve upon any Inqueſt, and that by the ſame reaſon the Teſtimony of ſuch a man for a Witneſs is in all Caſes to be rejected.

L. C. J. Who ſays ſo?

Mr. *Darnal*, My Lord *Cook.*

L. C. J. Men do not ſlight my Lord *Cook.* Where do you ſay that is?

Mr. *Darnal*, It is in Mr. *Bulſtrode*'s Second Reports, in *Brown* and *Craſhaw*'s Caſe, Fo. 154.

J. Jones, But you ſhould have brought theſe Books hither.

Mr. *Darnal*, I ſuppoſe Sir they may be had in the Hall. My Lord *Cook* gives this Reaſon for it in that Caſe, He ſaith, That notwithſtanding his Pardon he is not *Probus & legalis homo*

J. Jones,

J. Jones, That Pardon was before any Judgment it was a Pardon of Felony before any Tryal or Judgement; but here is a Conviction.

Mr. *Darnal*, My Lord *Cook* puts the case there of a Man Attainted. And, my Lord, *Induodecime Jacobi*, It is reported in *Brownlow's* Reports, Folio. 47.

J. Raymond, Which of his Reports?

Mr. *Darnal*, I know but of one set out in his Name alone, the other (which is call'd the First Part) is sett out in his and *Goldsborough's* Name. I have Mr. *Brownlow's* Reports here, and if your Lordship please you may see it.

L. C. J. What is the Page?

Mr. *Darnal*, Forty Seven, my Lord, The case there reported is, The King Pardon'd a Man Attaint for giving a false Verdict; yet he shall not be at another time Empannell'd upon any Jury; and the reason given there is, that though the Punishment was Pardon'd, yet the Guilt remain'd.

J. Jones, That is a very short Note, and not so much in the Book as you have mentioned.

Mr. *Darnal*, I writ it word for word out of the Book, Sir, and I am sure there is so much in my Book. My Lord, in Mr. *Justice Crooke's Elizabeth*, Fol. 686. in *Shelborn's* Case, it is held, that though the King may Pardon *Simony*, yet he cannot enable a *Simoniack* to retain a Living.

L. C. J. The Act doth make him not capable.

Mr. *Darnal*, I conceive, Sir, it is upon the same reason, because the Pardon cannot take away the Guilt, though it may the Punishment of the Offence.

J. Raymond, He can't dispense with *Simony*, he can't give a dispensation to take a Living.

Mr. *Darnal*, My Lord, upon these Resolutions and the reason of them, I humbly submit it to your Lordship, whether Mr. *Dangerfield* (having been Attainted of Felony, though he be since Pardon'd) can be a Witness.

Att. General, My Lord, with your Lordships Favour,

this is quite contrary to the conſtant and general Opinion, and contrary to the conſtant Practice: For, my Lord, with your Lordſhips Favour, when a Man is Pardon'd for any Crime, if a Man can't ſay he is a Felon, or he is Perjured, then he can't be reckoned ſo to any intent or purpoſe whatſoever.

L. C. J. I told you before it is conſonant to all the Reaſon and Law in the World, that a Pardon ſhould ſtop Mens Mouths from reviling ſpeeches that ſignifie nothing: but it is one thing to ſay men ſhall not go reviling, that can have no conſequent good, but which tends to the Breach of the Peace, and another thing to ſay he ſhall be *Liber*.

Att. General, My Lord, when the King gives him a Pardon, it is as if he had never committed the Offence.

L. C. J. He may be outlawed, notwithſtanding the Kings Pardon, and then it is not as if he had never committed the Offence.

J. Jones, It reſtores him to wage battle, and it makes him *Liber & legalis homo*: for if a man may wage battle, he is *Liber & legalis homo*.

Att. General, Then, my Lord, if he be ſo, he ſhall be a Witneſs: For my Lord, in the Point of Perjury, a man that after a Conviction of Perjury had a Pardon, hath been admitted ſeveral times.

L. C J. Was the Exception taken, Mr. *Attorney*?

Att. General, Yes, my Lord, and he rejected before he had a Pardon.

J. Raymond, How many Men have been Witneſſes that have been convicted of Felonies, after the Kings have Pardon'd them?

Recorder, I will not adventure to ſay that there hath been a particular Objection made, and ſo that the Court hath had the Debate of it: but I will undertake to give your Lordſhip ſeveral inſtances of Men that have been Convicted, and the Judges ſitting there knew them to be ſo Convicted, and did not take notice of it.

J. Raymond, I ſpeak of *Witheringon* particularly?

Re-

Recorder, He was a Witness, though every man did know that *Witherington* was Convicted. I begg your Lordships leaves to speak it, that the Judges themselves did know that he was Convicted and had received Sentence of Death.

Sir *F. W.* The constant Practices of the Judges is a mighty Conclusion.

L. C. J. What think you, Mr. *Attorney*, if a Man be Convicted of Felony, and afterwards hath a General Pardon, is he a Witness?

Att. General, Yes, truly, my Lord, it signifies the same thing, my Lord, as to be a Freeman again.

J. Jones, He cannot be of a Jury, if he be Attainted of Felony, and the reason is because he is not *Probus & legalis homo*: and why he should not as well be of a Jury as a Witness I cannot understand.

Att. General, There is a great deal of difference, my Lord, a great many Men may be admitted to be Witnesses that cannot be admitted to be Jury men.

J. Jones, Shew me any man that is excluded from a Jury and admitted to be a Witness, except in the case of Kindred.

Att. General, An hundred.

L. C. J. Shew me any Man who being of a Jury was excluded, and yet made a Witness.

Att. General, A Villain was not admitted to be a Jury man, but a Villian was always to be a Witness, and that was a point of Infamy.

L. C. J. What Infamy was contain'd in being a Villain?

Att. General, He was a Criminal, he was not *Liber homo*.

L. C. J. But though he be not a Freeman, he may be an honest man.

Recorder, My Lord *Hobart* says, A Pardon takes away the Guilt.

L. C. J. It takes away Guilt so far as he shall never be questioned; but it does not set a Man as if he had neuer Offended. It cannot in reason be said, a Man guilty of Perjury is as Innocent as if he had never been Perjured.

Att.

Att. General, I say if a Man be Pardoned he is as if he were not Guilty.

L. C. J. If I were in my Lord *Castlemain's* Case, I would submit it; but when he hath given his Testimony, my Lord shall have liberty to give in the Records against him of what Crimes he hath committed.

J. Jones, I do confess indeed that my Lord *Hales* in his little Book of the Pleas of the Crown, saith, That a Man that hath had the benefit of his Clergy, is restored to his Credit.

J. Raymond, If that case be allowed it is a plain case, for there is no Man can wage Battle, but he that is *Liber & legalis homo.*

Recorder, A Man broke Prison and therefore he could not wage Battle; he replies the King hath Pardoned me that Felony; and thereupon he is admitted to wage Battle.

J. Jones, Where there is no Judgment given in the Case, and the King doth Pardon a Man, that doth make a very great difference.

Recorder, In the Case of *Witherington*, my Lord Chief Justice did look upon the Records, and afterwards said he was a good Witness and was Admitted.

Prisoner, If you have Law by you I must consent.

L. C. J. Then you must consent.

Recorder, There are several Persons, who have had Pardons after Robberies, and we are forced to make use of some of these Fellows.

L. C. J. Before Conviction.

Recorder, No after Conviction, my Lord, I have known a Prisoner at the Bar, when my Lords the Judges have been there; to be a Witness. And if the Court had made any doubt, it would have been a Question before this time of day.

Att. General, My Lord, if you please Mr. *Dangerfield* may be Sworn. If your Lordship pleases.

L. C. J. My Lord shall have the benefit of excepting against his credibility.

Then Mr. Justice *Raymond* went down to the Court

of

of Common Pleas; to know their Opinion.

J. Jones, Have you any other Witneſs in the mean time?

Att. General, No, my Lord, he is a principal Witneſs.

Sir *F. W.* Beſides the common Practice, here is a Book that ſays, he ſhall wage Battle.

J. Jones, That is, when there is a Pardon before Conviction.

Sol. General, But here, my Lord, he ſays the *Reatum* is taken away, and then it takes away his diſabilities too. The difference can be nothing here before Conviction, and after, becauſe before Conviction there is a diſability, before Conviction he is diſabled from waging Battle: So that that makes no difference before Conviction, and other Caſes after Conviction, and the diſability is taken away by the Pardon, and he is reſtored to be a Freeman.

L. C. J. There is a diſability upon Preſumption, tho not upon Conviction.

Sol. General, There is the ſame legal impediment in the one as in the other: but his Credit is left to the Breaſt of the Jury.

Recorder, When a Pardon comes, it takes away not only *Poenam* but *Reatum*, and the Reaſon my Lord *Hobart* gives.

L. C. J. Nay give your Reaſon.

Recorder, For Felony is *Contra Coronam & Dignitatem*, is a Fault againſt the King, and when the King Pardons it, it ceaſes; and in another place it is ſaid, It Pardons all diſabilities incident to him.

J. Jones, That is before Conviction ſtill.

L. C. J. Don't my Lord *Cook* tell you expreſly, That the taking a Pardon doth not prove any Offence? You take a Pardon, it ought not to be concluded that you are Guilty; but the proper concluſion of a Wiſe Man is, that you would be ſafe: It can't be thought that every Man that hath a Pardon in *England* is guilty of all thoſe Offences that are there Pardoned.

J. Jones, There is a difference between a General

Pardon and a particular Pardon; when a Man doth accept of a special Pardon, it must be intended that he hath some Consciousness of Guilt, or else he would not take it; but he that is included in a general Pardon, may be clear, because all Men are included in it, unless some Persons particularly excepted; and the difference is taken in that very point from accepting a General and a Special Pardon.

L. C. J. That the Acceptance of a General Pardon, doth not barely of it self intend Men to be Guilty of the Crimes, is plain, and the reason is most apparent, for besides that Men be safe, so there be times that give a Reason why Men should have a Pardon, because no man knows when he is safe; Perjury so abounds that no man can say he is safe, and that is a Reason why Men should be very willing to accept of Pardons.

Clerk of the Crown, Here's my Lord *Hales*'s Book about the Pleas of the Crown.

Recorder, He says when the King hath discharged and pardoned him, he hath cleared the Person of the Crime and Infamy.

J. Jones, It is so no doubt.

Sir F. W. May we pass upon these Authorities?

J. Jones, Sir *Francis*, We are not willing to go about it till it be concluded, for that purpose we have desired my Brother *Raymond* to know the Judges Opinions of the Common Pleas.

Recorder, He doth expressly say it hath restored him to his Credit, and in *Witherington*'s Case he did call for the very Records.

Att. General, If it restore him to his Credit, I hope it shall not blemish him so much when he is Sworn, that he shall not be believed.

L. C. J. We won't have any prepossession in that Case, his Crimes shall be all taken notice of: Is it fit to have Men Guilty of all sorts of Villanies, and not to observe it.

J. Jones, In that very Case, my Lord *Hobart* says, A Man may say of a Pardoned Man, he was a Felon, though

though he cannot say now he is a Felon; and now what can be objected to this Case?

Recorder, Things may be objected against a Person, and his Credit left to the Jury, but the Question now is, Whether he shall be a Witness or no.

L. C. J. We have Men grown so Insolent, they behave themselves with that vile Insolence, that now they take upon them to speak against whole Societies of Men, as if to be there were any thing in them that should render them better then their former Lives or Natures. Humility becomes Penitents, and no wicked Man is supposed to be penitent, that hath not that, but these carry it with that Insolency, as if they were not concern'd themselves, when God knows the best of them discover what they do, by being but parties themselves.

[*Mr. Justice* Raymond *return'd from the Court of Common Pleas.*

L. C. J. I will tell you what my Brethrens Opinions are; he hath put it to them on both Accounts, That he was convicted of Felony and Burnt in the Hand for it, that he was outlawed for Felony, and had a General Pardon. They say they are of Opinion, That a General Pardon would not restore him to be a Witness after an Outlawry for Felony, because of the Interest that the Kings Subjects have in him. But they say further, That where a Man comes to be Burnt in the hand, there they look upon that as a kind of more General Discharge, then the Pardon alone would amount to, if he had not been burnt in the hand. They say, If he had been Convicted of Felony and not Burnt in the hand, the Pardon would not have set him upright, but being Convicted and Burnt in the hand, they suppose he is a Witness.

Sir *P. W.* Swear Mr. *Dangerfield.*

L. C. J. The very Attainder is taken away, and so all is gone.

Att. General, Come Mr. *Dangerfield* are you Sworn?

Mr. *Danger-*

Mr. *Dangerfield*, Yes, Sir.

Att. General, Pray tell what you know of my Lord *Caſtlemain*.

L. C. J. I perceive my Brethrens Opinion is, That if a Man were convicted of Perjury, if there be no Burning in the Hand in the Caſe, that a Pardon could not ſet him upright, becauſe of the Intereſt of the People in the King.

Att. General, Come, Mr. *Dangerfield*, are you ſworn?

Mr. *Dangerfield*, Yes, Sir.

Att. General, Then pray ſay what you know of my Lord *Caſtlemain*.

Mr. *Dangerfield*, About this time Twelve Month, my Lady *Powis* ſent me with a Letter for the Priſoner at the Bar, my Lord *Caſtlemain*.

L. C. J. Don't you know him?

Mr. *Dangerfield*, Yes, my Lord, this is the Perſon. And, my Lord, the Contents of that Letter I know not: but his Lordſhip made me ſtay till he wrote an Anſwer, and the Contents of the Anſwer, my Lord, were to this effect: For I return'd with the Anſwer, to the Lady *Powis*, and ſhe opened and read it while I was preſent.

L. C. J. Aloud?

Mr. *Dangerfield*, Aloud, my Lord.

L. C. J. To you.

Mr. *Dangerfield*, To me.

L. C. J. Who was there?

Mr. *Dangerfield*, Mrs. *Cellier* was there beſides. And the Contents of this Letter were, This Perſon I like well, and though he be no Scholar, he will ſerve to Inſtruct the Youths as he ſhall be directed. By the Youths were meant the St. *Omers* Witneſſes.

L. C. J. How do you know?

Mr. *Dangerfield*, Becauſe I know my Lord was employed for that purpoſe. I know his Lordſhip did uſe to Inſtruct the Youths; and it was a common ſaying among them, when one of them was out of his part, they uſed to ſay, I muſt go to my Lord *Caſtlemain*.

L. C. J.

L. C. J. What part?

Mr. *Dangerfield*, That which they were to ſay, and one of them did ſay, I am out of my Leſſon, I muſt go to my Lord *Caſtlemain*.

L. C. J. When did he ſay ſo?

Mr. *Dangerfield*, Before the Tryal, my Lord, and my Lord *Caſtlemain* went along with them to the Tryal, and his Lordſhip complained of ſome ill uſage that the Witneſſes received there. His Lordſhip was one of the Perſons that imployed me to get *Lane* out of the *Gate-houſe*, my Lord, and his Lordſhip ſent me to a Sollicitor of his, whoſe Name was Mr. *Lawſon* (the Perſon is now in Court) to take an account how far he had proceeded in this Affair. I did take an Account, and I proceeded in it afterwards and got him diſcharged.

L. C. J. How came you into my Lords acquaintance?

Mr. *Dangerfield*, That was the firſt time, when my Lady *Powis* ſent me with that Letter, my Lord. A pretty while after this, in the Month of *July*, I went to wait upon his Lordſhip at his Houſe in *Charing-Croſs*, the ſame place where I found his Lordſhip before; and I was to take his Advice a bout ſome Letters that came from one *Nevil alias Paine*. Thoſe Letters and Liſt of Names I ſhewed his Lordſhip, and he gave his Approbation of them, and deſired good ſtore of Copies might be writ: for it was of conſequence and ought not to be neglected. And ask'd me, Are there working Perſons employ'd in that buſineſs? And ſaid he, Encourage them, and I will pay my part. So my Lord, after there were a great number of Copies writ of theſe Letters, I writ a Letter to my Lord *Caſtlemain*, to let his Lordſhip know that the People had finiſh'd their work, and that there was ſomething more to be done as a Gratuity; and then his Lordſhip in Anſwer to this Meſſenger (who is here alſo in Court) with a Letter his Lordſhip ſent Forty Shillings for his part. And Mrs. *Cellier* told me ſhe received Forty Shillings and diſpoſed of it to

the uſe intended; now, my Lord, the Contents of theſe Letters were to the ſame effect with thoſe Letters and looſe Papers which I conveyed into Collonel *Manſell*'s Chamber; and theſe all tended to the promoting the Sham-plot, my Lord.

L. C. J. Pray tell me what was the Subject of theſe Letters; what was the ſubſtance of them?

Mr. *Dangerfield*, To the promoting the Sham-plot. my Lord.

L. C. J. That is a General no Body knows what to make of.

Mr. *Dangerfield*, I will give your Lordſhip an Account in particular: The contents of many of them were to this purpoſe.

L. C. J. Were they not all alike?

Mr. *Dangerfield*, The Copies were the ſame, and there were ſo many Originals to draw Copies from.

L. C. J. Were not the Originals all to the ſame purpoſe?

Mr. *Dangerfield*, Agreeable in Point of ſenſe.

L. C. J. Pray tell us the purpoſe of them?

Mr. *Dangerfield*, The purpoſe was, That ſo many Letters ſhould be conveyed into the Houſes of ſeveral Perſons of Quality in this Kingdom, that were called Presbyterians: for that was the Notion, that all Perſons, that were not for the immediate promoting of the Catholick Intereſt, lay under; becauſe they looked upon that Notion to be moſt obnoxious.

L. C. J. Who and where?

Mr. *Dangerfield*, In general, my Lord.

L. C. J. In general, where?

Mr. *Dangerfield*, By my Lady *Powis* and the Lords in the *Tower*.

L. C. J. Were you by when the Lords in the *Tower* did agree to it?

Mr. *Dangerfield*, When my Lord *Peter* and my Lord *Arundel* did.

L. C. J. What did they agree to?

Mr. *Dangerfield*, My Lord the thing is this, after they

they received an Account from one Mr. *Paine*; I brought a Billet from that *Paine*; wherein was contain'd a Ground or Scheme of the Presbyterian Plot; so from thence it derived its First Name, my Lord: so that when I came to Discourse with the Lords in the *Tower* about it, they called it the Presbyterian Plot; and Mrs. *Cellier* and the Lady *Powis* said, This is a Notion that will do the business, as it is most obnoxious, and as best to our purpose.

J. Jones, How far was my Lord *Castlemain* concern'd in this?

Mr. *Dangerfield*, I have not heard his Lordship speak of it under that Notion.

L. C. J. Pray let us hear what you can say against my Lord *Castlemain*.

Mr. *Dangerfield*, Now, my Lord, some considerable time after I had gotten *Lane* out of Prison, I was imployed by several other persons, his Lordship was one; and he sent me to his Lordships Sollicitor, that is now in Court. A pretty while after this, and the Letters and Lists of Names, containing matter to the same effect as I told you before, as those in *Mansell*'s Chamber, and all tending to the Credit of the Sham Plot, or the Presbyterian Plot. Now, my Lord, a pretty while after this, in *August*, as near as I can remember, about the middle of *August*, I went to wait upon his Lordship, the very next day after I had been treated withal in the *Tower* to kill the King, whom God preserve, my Lord; and his Lordship had a Servant then in the Room, and he sent his Servant down Stairs, and looked upon me with a very Austere Countenance: Said he, Why would you offer to refuse the business for which you were taken out of Prison?

L. C. J. To you?

Mr. *Dangerfield*, To me, my Lord.

L. C. J. Who was by?

Mr. *Dangerfield*, Nobody, but his Lordship and my self; for he sent his Servant out before: So he asked me, Why I would offer to refuse the business I was taken out of Prison for? I asked his Lordship, What

that

that was? Said he, Was not you at the *Tower* yesterday? Yes, my Lord, I was. Would your Lordship have me Kill the King, I suppose that's the business. Yes, that is, said he Upon which my Lord fell into such a fury, that I was fore'd rudely to leave the Room, and went down Stairs. I think at the same time his Lordship was writing the Compendium of the late Plot; for there I saw some words in a Paragraph that lay upon the Table, which I afterwards saw in that Book. There was Ink set upon the Table, and open in his Lordships hand. And his Lordship did use in his Discourse to call his Majesty Tyrant.

L. C. J. Have you heard him? In what company?

Mr. *Dangerfield*, In his familiar Discourse. As to ask when his Majesty will return from *Windsor*? Says he, When the Tyrant pleases. And I remember I heard his Lordship mention the word Tyrant to Mrs. *Cellier* at *Powis-house*.

Att. General, How came that Discourse about Killing the King? What was the occasion of that Discourse?

L. C. J. Had you refused it to my Lord?

Mr. *Dangerfield*, Yes, my Lord, I refused.

L. C. J. What did you say to him?

Mr. *Dangerfield*, I said any body but my King, my Lord.

L. C. J. He said, Why did you refuse to do that for which you were taken out of Prison? What is that my Lord? Was not you at the *Tower* yesterday? Why won't you do it? What is it, my Lord? Is it to Kill the King? I suppose that it is, saith he, That your Lordship intends. Yes says he, That is it, why won't you do it? That is what he says.

Att. General, That is the Evidence we give.

J. Jones, You say he was very violent.

L. C. J. Was you ever in his company afterwards.

Mr. *Dangerfield*, No, not after that, my Lord, that I know of.

L. C. J. What kind of fury did he shew to you at that time?

Mr. *Dan-*

Mr. *Dangerfield*, My Lord, he was in a great rage, as his Lordſhip is very cholerick; he was buſtling about, and I knew not what he intended to do, and I was unwilling to ſtand the Teſt of his Anger. His Lordſhip ſeemed by his look to be meditating Revenge.

L. C. J. How?

Mr. *Dangerfield*, I ſay this, After his Lordſhip had ſent his Servant out of the Room, ſaid he, Why would you offer to refuſe the buſineſs for which you were taken out of Priſon? Said he, Were not you at the *Tower* yeſterday? Said I, Yes, my Lord, I was; Would you have me kill the King? Is that the buſineſs? Yes, that it is, ſaid my Lord very angrily.

Priſoner, When did you go to the *Tower*? Was this the next day after it?

Mr. *Dangerfield*, The next day after it.

Priſoner, Mr. *Dangerfield*, Pray let me ask you one Queſtion, Did not I threaten to kill you, or have ſome of my Servants kill you, if you came unto me again?

Mr. *Dangerfield*, One time his Lordſhip ſaw me at my Lady *Powis*'s houſe, and he ſhewed me a very particular Favour. I ſpeak it in the preſence of Almighty God, nothing out of revenge, nor for any ſort of Intereſt.

Priſoner, Was I never angry with you but at that time?

Mr. *Dangerfield*, No, my Lord, I know not of any other time that your Lordſhip was angry.

L. C. J. Now what ſay you, my Lord?

Priſoner, The Firſt thing I deſire to do, is, here are two Gentlemen gives in Evidence againſt me, the one is Mr. *Oates*, the other Mr. *Dangerfield*. Mr. *Oates* ſays, That he in *Spain* did ſee ſeveral Letters from me: That when he came over into *England*, he brought a Letter from *Spain* to me, that that Letter was given to the Provincial, and the Provincial (he ſuppoſes) gave it me. Now, my Lord, I only deſire this, that the firſt thing that ſhall be done, is, that

you will please to call Mr. *Parker*, who will shew you what a kind of Man Mr. *Oates* is. And I am glad, since you say that Mr. *Dangerfield* is a good Witness, that I can prove that every word he says is a lie. And so begin with Mr. *Oates*,

Prisoner, My Lord, I would offer you a Record, a Record of some particular Actions from *Hastings*.

L. C. J. Read the Record.

[*The Record Read.*

L. C. J. What use can you make of this?

Prisoner, My Lord, the case is only this, My Lord, I will tell you, here is Mr. *Oates*, this is only to shew what kind of Man this Mr. *Oates* is. Mr. *Oates* he comes and accuses a Man at *Hastings* for Buggery, there he is Indicted and comes to his Tryal, and then he is found Innocent: Now, my Lord, I sent for this Mr. *Parker*, to tell your Lordship what kind of man this Mr. *Oates* was, and for that purpose shew the whole proceeding.

L. C. J. My Lord, you shall have all the Justice in the World; but we must have right done to the Kings Evidence. You have brought in a thing, whereby all you can make against Mr. *Oates* is this, That he was the Prosecutor of a Man for the Crime of Buggery, and is supposed to have taken his Oath there, and notwithstanding the Jury would not believe him, and found the Man not Guilty.

Prisoner, My Lord, I come to shew you the motives how the Jury came to clear him, that is, by proving this man was in another place at that time, and satisfied the Court and Jury, that he was from Eleven a Clock or sooner, till Eight or Ten a Clock with them in Company; where it was only the malice that was between *Oates* and *Parker*. And several Witnesses that were in the place where he said the Buggery was committed, said that he was not there, and they Witnesses positively said they were with him,

and

and all looked upon Mr. *Oates* as a deteſtable man, and ſent him out of the Court.

L. C. J. Do you prove this by any but *Parker*?

J. Raymond, This ought not to be admitted; for if it be, Mr. *Oates* ſtands here to anſwer all the Faults that ever he committed.

L. C. J. Here is the Caſe, Suppoſing it be true now, that Mr. *Oates*, proſecuted a man for Felony, and he gave Teſtimony, ſuppoſing it ſhould be ſo, and yet the Jury acquitted him; What uſe can you make of it? You can make no Inference; it is a thing we muſt allow all the Juries in *England*: For there is Witneſs generally given on both ſides, and when there are for the Plaintiff, the Defendants Evidence are all Perjured, and when for the Defendant the Plantiffs Evidence are Perjured.

Priſoner, My Lord, this is the Inference. Thus much I make of it, that this *Parker* is Innocent. *Oates* ſwears poſitively he did ſo, the other ſwears poſitively this man was not there, to ſhew the Malice *Oates* had againſt him.

L. C. J. My Lord, you can go no further than you have gone. The reſult of all is, that the Jury found him not Guilty: For what grounds no man can come to ſay, but the Jury men themſelves. No man can tell what prevailed with the Jury to find him not Guilty, that is in their own Conſciences, and theſe are things that cannot be Examined. His Jury, notwithſtanding Mr. *Oates* was the only Proſecutor, they found him not Guilty, and it amounts to nothing.

Priſoner, My Lord, there is another thing, while this man was in Priſon, what does *Oates* do, but comes here to *London*, accuſes the Father, who was a conſiderable man in the Town, a Juſtice of the Peace, and Mayor th eyear before; accuſes him becauſe he ſhould not aſſiſt his Son, accuſes him before the King of ſpeaking ſcandalous words. Then he gets him by a Meſſenger brought up before the Council, the King was preſent at the hearing, and there it was proved to the King, as the order of Council ſhews, that he was an honeſt man, and ſo the Coun-

cil

cil sent *Oates* away with the greatest contempt, and freed the other man.

L. C. J. Was this before the Plot was discovered?

Prisoner, Yes, my Lord, in pursuance of it.

L. C. J. You said it was that he should not help his Son, his Son was not free.

Prisoner, No, he was in Prison, my Lord.

Recorder, My Lord, may think hard if he hath not some competent liberty; but he must keep to the business. You say, that notwithstanding he hath the Opinion of the Court, that the Jury must take notice, then the Jury must take notice it signifies nothing.

Prisoner, Very well. Having told you this, I desire you would be pleased to take notice, after *Oates* was thus forced to run away from *Hastings*, here it seems he was converted to be a Papist, by a Person whom Mr. *Oates* hath since converted to be a Protestant; and you shall see what an Account this Gentleman will give of him.

L. C. J. What is his Name?

Prisoner, *Hutchinson*.

L. C. J. What will you do against him?

Prisoner, Several things, my Lord.

L. C. J. You must not do it. If you are able to disprove Mr. *Oates*, in any of these particulars, you may do it. If you alledg Testimony against the particular matter he hath sworn, you will do very well; but pray, my Lord, keep to that.

Prisoner, I will, my Lord. I will submit any thing to your Lordships Commands, and therefore, my Lord, I will tell you for what reason I sent for this man, to tell you how Mr. *Oates* went to *Spain*, and how he lived in *Spain*.

L. C. J. If you can shew the Jury any reason why they should not believe his Evidence, that will be very proper.

L. C. J. What is your Name?

Hutchinson, My name is *Hutchinson*.

Prisoner, Mr. *Hutchinson*, pray say what you have

to

to say, and not follow Mr. *Oates's* method, I only ask you this Question, Sir, Whether you did convert this man, that is, reconcile him to the Church of *Rome?*

Hutchinson, Yes, my Lord, that I did.

L. C. J. You ought not to ask him such Questions; you bring him in danger of his life; you are not to ask him such Questions.

Recorder, Let us see the Statute Book.

Clerk of the Crown, It is High Treason.

L. C. J. You thought this had been meritorious now, and it is High Treason.

Recorder, This it is to abound in a mans own sense. We must beg your Lordships Advice in this.

L. C. J. Are you a Protestant now?

Hutchinson, Yes, my Lord.

Prisoner, He was a Priest, and confesses his Error.

L. C. J. Did you know *Oates* first in *Spain?*

Hutchinson, No, my Lord, I knew him first here, and we were in company, and I told him, He could not be a true Priest, since he was of the Church of *England*.

Att. Gen. He offers such things as are not Evidence.

L. C. J. Pray what do you know of his Imployment in *Spain?*

Hutchinson, I received Letters from him when he was in *Spain*. He went over to study Philosophy and Divinity there, and I saw his recommendations to the Rector of *Liege*.

L. C. J. Did you see him?

Hutchinson, Yes, my Lord, I did see him before he made this disturbance.

L. C. J. What disturbance? Do you know? What Discourse had you with him?

Hutchinson, I employed him in writing for me.

L. C. J. Writing what?

Hutchinson, In writing certain things against the Corruption of the Church of *Rome*. He had Ten Shillings I gave him, and this was before the Discovery he made (as he pretends) of the Plot. And he told me he would suffer no more for Conscience sake. It is an hard thing, said he, Mr. *Berry*, for a man to want Bread. Upon which I gave him Ten Shillings.

L. C. J. He says, having been formerly with Mr. *Oates*, he imployed him to transcribe many things for him, and Mr. *Oates* said to him, he was resolved no more to suffer for Conscience sake. How, saith he, not so. Oh but Mr. *Berry*, said he, it is a very sad thing to want Bread. And upon that, he says, he gave him Ten Shillings for his pains in writing.

Hutchinson, And hereupon, my Lord, in *May* was Twelve-month, he sent for me, when I heard he had done some more mischief; and I went to him, my Lord.

L. C. J. That was after the Discovery?

Hutchinson, Yes, my Lord, upon that he was very kind to me, and gave me Twenty Shillings. Said he, Mr. *Berry*, you have been civil to me, and you shall never want any thing, so long as I have it. Said I, Mr. *Oates*, are these things true, that you swear against the Jesuits? Said he, as I hope for salvation they are: And that was the truest word he spake these three years. Then said I, Mr. *Oates*, answer me this only one thing, There are an Hundred and twenty Persons that saw you every day; and dined and supp'd with you at St. *Omers*, and these you have recommended to me for Vertuous People, and I know them to be so. He said, They are Outlawed men.

L. C. J. What did Mr. *Oates* say more?

Hutchinson, He was with me frequently, my Lord.

Recorder, He paid you your Angel well when he gave you Twenty Shillings.

Hutchinson, Mr. *Oates*, Speak the truth, there is a God in Heaven.

Dr. Oates, Shall I be allowed to satisfie the Court as to this Evidence? I will give the Court a very good account.

L. C. J. The substance is this, That you were poor. Is it true that he gave you Ten Shillings?

Dr. Oates, My Lord, I believe I might not have much money among them.

L. C. J. And you said, *You would suffer no more for Conscience sake?*

Dr. Oates, That is not so, my Lord.

L. C. J. And, *That it is an hard thing to want Bread?*

Dr. Oates, My Lord, I never wanted Bread.

Hutchinson,

Hutchinſon, But you ſaid ſo to me, Mr. *Oates*.

Att. Gen. Hark, Mr. *Hutchinſon* —

Dr. Oates, To ſhew the Invalidity of this Evidence, my Lord, the Biſhop of *London* hath turn'd him out of his Living at *Barkin*.

L. C. J. What is that?

Dr. Oates, To ſhew that he is not fit to be truſted.

L. C. J. Why you have never a Living.

Dr. Oates, Yes I have, my Lord.

L. C. J. Where?

Dr. Oates, In *Kent*, my Lord.

L. C. J. How long have you had it?

Dr. Oates, I was reſtored to it laſt Summer.

Recorder, He ſays, That he had Diſcourſe with him concerning his Prieſthood, Whether Mr. *Oates* thought himſelf to be a good Prieſt, that is, as he was made by the Order of the Church of *England*?

Att. Gen. He ſays, He converted Mr. *Oates* to be a Papiſt.

Dr. Oates, And I have a Charge of High Treaſon againſt that man, for ſeducing me from my Religion, my Lord. I will ſwear he turn'd me to the Church of *Rome*, and I deſire it may be recorded.

Dr. D. I have one thing to tell your Lordſhip, the man is mad, he is diſtracted.

L. C. J. This Doctor of Divinity is a very honeſt man, he will tell you.

Dr. D. He was my Curate at *Barkin*, and my Lord of *London* having ſome Information againſt the manner of his Preaching, ſent me word to *Ripon*, he would provide me another Curate. On Saturday laſt, dining with him, my Lord told me he was diſtracted.

Recorder, His Behaviour is a very concurrent Teſtimony.

J. Raymond, I appeal to my Lord, if I did not tell him as he came into the Court, that he was a diſtracted man.

L. C. J. Call another Witneſs.

Priſoner, Here's a Gentleman was his School-fellow at *Vallodolid*. I ask you Mr. *Armſtrong*, Whether you knew any thing of Mr. *Oates* there?

L. C. J. How long had he been there?

Armſtrong, He was Three months there before me.

L. C. J.

L. C. J. How long was he there in all?

Armstrong, A matter of a moneth.

L. C. J. Was he not there Four months?

Armstrong, Yes, a matter of Four months in all.

L. C. J. He says, He had been there Three months before he came, and a month after he came; and that then he was but a common Scholar.

Dr. *Oates*, My Lord, I will satisfie the Court when they question me.

L. C. J. In what would you satisfie us?

Dr. *Oates*, About being a Scholar. I was ready to commence when they came; but being they were Strangers in the Town, not being Town Scholars, and not undertaking Philosophical Dictates, the Fathers did pray me to shew them the way to School, and I went with them two or three times.

L. C. J. Call another, my Lord.

Prisoner, Mr. *Palmer* and Mr. *Derrington*.

L. C. J. Did you know Mr. *Oates* at St. *Omers*?

Palmer, Yes, my Lord, and he was an ordinary Scholar there, and dined and supp'd with us.

L. C. J. You said he dined at another Table.

Palmer, Yes, my Lord, he did dine at a Table by himself; but it was at the same time.

Dr. *Oates*, Had I Scholars Commons? Pray my Lord ask them that.

Palmer, He had the same Commons that we had; but they had a respect for him as he was an ancienter man, and that was the reason that he had more freedom than the rest.

Prisoner, My Lord, He says he came from St. *Omers* at the Consult, Pray Sir, who did you come along with? Did you come with *Hilsley*?

Dr. *Oates*, *Hilsley* came with me in the Pacquet-boat.

Prisoner, Call *Mr. Hilsley* and *Osbourne* — My Lord, this Gentleman. I would bring nothing to offend your Lordship; or nothing that hath been old, if it had not some new inference from it: Therefore, my Lord, this is the reason that I sent for *Mr. Hilsley*. *Mr. Hilsley* did you come with *Mr. Oates* in *April* in the Pacquet-boat?

Hilsley, No, my Lord.

Priso-

Prisoner, You left him at St. *Omers*.

Hilsley, Yes, my Lord.

Prisoner, Now, my Lord, I have several Witnesses to prove this. And pray, Mr. *Osbourn*, tell my Lord what he said to you.

Osbourn, My Lord, about the latter end of *April*, I heard *Mr. Hilsley* was in Town, I went to see him, and one time at a Coffee-house about the *Turnstile* we fell in Discourse.

L.C.J. My Lord, you say you have two Persons of Quality. I will tell you my Lord what you shall expect, I will not be for one and not for t'other; but be equal as near as I can. If he comes only to testifie what *Hilsley* told him, it signifies nothing.

Prisoner, I do depend upon *Hilsley*, but this is that *Hilsley* told him, That there was one *Oates* at St. *Omers*.

L.C.J. That is no Evidence, nor can Ladies of Quality prove by their own Experience what Mr. *Hilsley* affirms, That *Oates* came not over with him.

Prisoner, My Lord, They can tell, and one Lady a Protestant, that talking with this Gentleman before the Plot —

L.C.J. This is only Discourse what another man says. If Mr. *Oates* himself should have said so, then indeed it is proper; but to shew you this, it is impossible, supposing they speak truth, that is, if they do witness what they do not, That long before they heard of the Name of *Oates*, this Gentleman should tell them one *Oates* was left at St. *Omers*; it signifies nothing.

Prisoner, Does not that confirm Mr. *Hilsley*'s testimony?

L.C.J. No, indeed.

Prisoner, I only refer this to you, my Lord; *Hilsley* says in *April* he did leave *Oates*, and here are four or five Witnesses that *Hilsley* told them so.

J. *Jones*, All that my Lord says, is this, That he did leave Mr. *Oates* at St. *Omers*. If it be objected, They are Catholicks, as they call them, says my Lord, *Hilsley* did tell this Story before there was any Plot. Why should he tell them so? It is not in favour of that Religion that he speaks; but the time of testifying such a thing, shews he speaks true. This is all.

Priſoner, This is the Inference, This is only to corroborate and ſhew you the credit of his teſtimony.

J. Raymond, It may be a miſtake though, and it is of no more force than what he ſays now.

Att. Gen. They were all miſtaken in that matter.

Dr. Oates, My Lord, he did leave me at St. *Omers*, but I overtook him at *Calais*.

L. C. J. Will you ſwear it Mr. *Oates*?

Dr. *Oates*, I ſay upon my Oath I did it.

L. C. J. It were a great matter if you had any body to prove that this Gentleman came alone, but that is ſtill but one mans teſtimony.

Priſoner, But here is Confirmation to his Evidence, that he could not invent it.

Att. Gen. You had Sixteen once, but the contrary was proved and believed, and ſo it may be again.

Priſoner, Call Mr. *Gregſon* and *Rigby*. Mr. *Gregſon* were not you Landlord to Mr. *Oates* before the Plot was diſcovered? How long before the Plot did he lie at your Houſe?

L. C. J. What time?

Gregſon, A Week before *Eaſter 77*.

J. Raymond, When did he go away from you, Sir?

Gregſon, The Sunday after *Eaſter day*.

J. Raymond, When did you ſee him again?

Gregſon, He came to me about *All Saints*.

J. *Raymond*, The ſame year?

Gregſon, Yes.

Dr. *Oates*, Who paid for my Quarters? Pray ask him that, my Lord.

Gregſon, He paid for it himſelf.

Dr. *Oates*, Did not Mr. *Fenwick* pay for it?

Gregſon, He did after you came from St. *Omers*.

Dr. *Oates*, My Lord, when I came laſt from St. *Omers*, I went directly to his Houſe.

Priſoner, Was not he in a poor condition?

Gregſon, He was then indifferently poor.

Priſoner, My Lord, This is only to prove his condition.

Dr. *Oates*, My Lord, I had only what the Jeſuits allow'd me.

L. C. J. You had nothing but what they allow'd you?

Dr. *Oates*,

Dr. *Oates*, Nothing elſe, my Lord.

J. Jones, They allow'd you a very ſcanty living.

Priſoner, Call Mr. *Littcott*. Mr. *Littcott*, Do you know any thing about a Divorce?

L. C. J. What ſhould he know?

Priſoner, Pray, my Lord, don't diſcourage me.

J. Raymond, But you muſt not ask things that are not to the purpoſe.

Littcott, My Lord, It was morally impoſſible there ſhould be a Divorce.

L. C. J. Was there any endeavour by my Lord concerning it?

Littcott, There was no ſuch Deſign.

L. C. J. How was that? But pray mind, you will be morally not believed elſe: Do you know my Lord uſed any endeavours, in order to obtain a Divorce?

Recorder, That is all that he ſays, *He never knew any thing.*

Priſoner, I only ſay this, my Lord, Mr. *Oates* comes here and ſays, That he heard me ſay, That I did ſpend a great deal of money. Now if I ſatisfie the Court that I never ſpent a Farthing towards a Divorce ——

L. C. J. If he had ſaid, Your Lordſhip laid out Sums of money, then it had been an Anſwer to that, if you could prove you had not.

Priſoner, You know I ſtand here accuſed for a great Crime, pray give me leave.

J. Raymond, If it were a matter of moment we would.

Priſoner, Pray, my Lord, hear me, here is a Man ſays, I ſpent a great deal of money about a Divorce; I come to tell your Lordſhip, That this very man, before your Lordſhips, and alſo before the King; and if your Lordſhips have forgot it, I will ſhew you Witneſſes that he ſpake it before the King, and before the Houſe of Commons; that I did actually ſue out a Divorce. Now I will ſhew my Lord that I neither could nor did go about it.

L. C. J. We are not to take notice of that now. If he did ſay a falſe thing before the Houſe of Commons, we cannot take notice of it now: For we cannot go to try whether he ſaid ſo, and whether that be true or falſe.

Priſoner,

Priſoner, I humbly begg my Lord, If this man that is upon his Oath hath ſworn before the King, that he did actually ſee the Divorce, and I prove that it was impoſſi- that he ſhould ſee the Divorce, becauſe it was impoſſible to get a Divorce——

L. C. J. What then?

J. Raymond, You muſt not be permitted to prove that, it is not pertinent to the Queſtion.

Priſoner, My Lords, with humble ſubmiſſion to you, he hath told me this before your Lordſhips, that I ſpent a great deal of money about a Divorce.

L. C. J. My Lord, You will be ſatisfied, when we have acquainted you what the ordinary Proceedings of a Court of Juſtice are in this Nature; what is, and what is not to be admitted. If you ſhould come to prove Mr. *Oates* had falſly ſworn a thing in another Court, and five or ſix Witneſſes ſhall come and ſay it is not true; we are not to hearken to it. The reaſon is this, firſt you muſt have him perjured, and we are not now to try, Whether that thing ſworn in another place be true or falſe? Becauſe that is the way to accuſe whom you pleaſe; and that may make a man a Liar, that cann't imagine this will be put to him: and ſo no mans teſtimony that comes to be a Witneſs, ſhall leave himſelf ſafe. And this is another Caſe, If he ſwore in another place what is contradictory to what he ſays now; then it is proper. If you could prove that he had ſworn in another place that he never ſaw you, it is very proper; but now to us he ſays, That he doth not remember whether ever he had ſeen a Divorce, or that you had ſued out a Divorce. All that he remembers is, That you ſaid, you had expended a great deal of money about a Divorce, and that is all he teſtifies here.

Priſoner, My Lord, my Evidence againſt Mr. *Oates* is this, That he waves what he ſaid before, when I came to ask him, and ſays, I don't remember. Now, my Lord, if he lies in one thing, he may in another.

J. Raymond, No man can remember all the things that ever he did in his life.

Priſoner, I have Witneſſes to appeal to, to witneſs every thing; and I repreſent it here to you, that I would with all

all my heart have Indicted him of Perjury, but for Mr. *Atturney General*: for I Imploy'd Two to Attend the Clerk of the Peace for Copies of the Indictments against Mr. *Langborn* and Mr. *Ireland*; they did come to the Clerk of the Peace, saith the Clerk of the Peace, I can't do it without Mr. *Atturney*'s Authority. My Lord, saith he, I would give them you with all my heart, but I must have leave from the Table.

Att. General, No, my Lord, I told you, I would not give it you without you had an Order from the King, and the Council did not think fit to give it you.

Prisoner, I think this is a little pertinent.

J. Jones, How doth any thing that your Lordship excepts against in this Gentleman's Testimony contradict it self? All that you accuse him of is, That Mr *Oates* had said he heard you say, you had spent a great deal of Money about a Divorce.

Prisoner, I only shew, if you are pleased to hear it, that he reported to the King that he actually saw the Divorce.

J. Jones, That agrees well enough with what he says now.

Prisoner, He said so in your Lordships hearing.

L. C. J. I don't remember it, If I did I would speak of it; I don't remember it upon my word.

J. Raymond, I protest I don't remember a word.

J. Jones, In the Court did he say it?

J. Raymond, Here we are all three that were present, I protest I don't remember it, but as to the business of the Divorce, I might look upon it as impertinent, and so possibly might not mind what he said.

Prisoner, I only offer this to you, and if your Lordships command me to desist I will desist.

Dr. Oates, I desire my Evidence to prove that I was in Town.

J. Raymond, Pray, Mr. *Oates*, you are an Evidence, you must be govern'd by Mr. *Atturney*.

L. C. J. It would be very fit, Mr. *Atturney*, to prove that Mr. *Oates* did come over with *Hilsley* in the Pacquet Boat.

J. Raymond, Mr. *Oates*, I remember very well gave an Account of his coming over, said he, I did come over with such and such persons, and among the rest was Mr. *Hilsley*.

This is only to prove that he was at the Consult.

Att. Gen. We can prove it.

[*Records produced againſt Mr.* Dangerfield.

L. C. J. Here is, That he was burnt in the hand, and Outlawed for Felony, Pilloryed for Cheating, Twice Pilloryed, and ſee whether he was Whipt or no.

Sir *F. W.* I know nothing of the Pillory.

J. Raymond, Here was a Record of being burnt in the hand, and a Record for putting away falſe Guinneys.

L. C. J. For that he was to ſtand in the Pillory.

Clerk of the Crown, Here is one Record for another Shilling gilt.

L. C. J. Was that in the Pillory too?

Att. Gen. He was fined Fifty Pounds.

Clerk of the Crown, Here are Three in *Salisbury* for Three ſeveral Guinneys, and he was Adjudged to the Pillory for them all.

Att. Gen. It was all at one Aſſizes, my Lord.

L. C. J. My Brother Tryed him.

Clerk of the Crown, He was Tryed before Mr. Juſtice *Jones*, and to ſtand in the Pillory for all three.

L. C. J. What have you elſe to ſay?

Priſoner, Call Mrs. *Cellier* and Mr. *Dowdal.*

L. C. J. What is your Name, Sir?

Dowdal, My Name is *Bennet Dowdal.*

L. C. J. What have you to ſay to him, my Lord?

Priſoner, Mr. *Dowdal* the caſe is this, Mr. *Dangerfield* tells me, I was angry with him at ſuch a time for a buſineſs at my houſe; was I not angry with him at *Powis houſe* for going to the Lords in the *Tower*?

Att. General, Then he did go about it?

Dowdal, Mrs. *Cellier* ſpake to me to ſpeak to Mr. *Dangerfield* not to be troubled at your anger.

J. Raymond, When was this?

Dowdal, After the Jeſuites died.

Priſoner, He proves this, That Mrs. *Cellier* ſpake to him to pacify Mr. *Dangerfield*, and *Dangerfield* did tell him I was angry with him for going in my Name to the Lords.

J. *Ray-*

J. Raymond, He ſays no ſuch thing, my Lord.

L. C. J. You muſt not ask him what Mrs. *Cellier* ſaid.

Mrs. *Cellier*, This day Twelve Month he and I had been employed in writing Copies of ſome Letters, and I ſent him to my Lord to know if he would go ſomething towards the Printing them, and he went from him to the Lords in the *Tower*. In an hour and half after, my Lord came to me very angry: Mrs. *Cellier*, ſaid he, I thought you would not forfeit your diſcretion to ſend ſuch a Raſcal to me; if you ſend him to me again I will bid my Servants kick him. And, ſaid I, to Mr. *Dangerfield*, you are not to note that; for he is a very good Man, and may be angry one time and pleaſed another; and I would have ſent him another time, and ſaid he, Pray Madam, don't ſend me thither, I would rather go an hundred miles of your Errand.

L. C. J. Dangerfield, that Diſcourſe you had with my Lord, was it before the Jeſuits dyed or after?

Mr. *Dangerfield*, What Diſcourſe?

L. C. J. When you diſcours'd about killing the King.

Mr. *Dangerfield*, No, my Lord, Two months after.

L. C. J. When was the time that theſe words were ſpoken?

Mr. *Dangerfield*, When his Lordſhip was in that Paſſion.

L. C. J. When was that?

Mr. *Dangerfield*, My Lord, it was about the middle of *Auguſt*.

L. C. J. Was you ever in his Company after?

Mr. *Dangerfield*, No my Lord, I ſaw him once at *Powis* Houſe.

L. C. J. Had he ever been angry before?

Mr. *Dangerfield*, No not till this time, my Lord.

L. C. J. Here Mrs. *Cellier* witneſſes that this day twelve month, my Lord was extreamly angry, inſomuch that when ſhe would have had you go on an Errand you would not.

Mr. *Dangerfield*, My Lord, that time I had been with my Lord *Caſtlemain*, I went home to Mrs. *Celliers* houſe, which I did then call my home, and ſaid I, My Lord *Caſtlemain* is moſt violently angry with me.

L. C. J. When was this?

Mr. *Dangerfield*, This was the latter end of *Auguſt*.

L. C. J. But ſhe talks of this time Twelve-month.

Mr. Dan-

Mr. *Dangerfield*, It is no such thing my Lord.

Mrs. *Cellier*, I said, Pray carry this Letter to my Lord *Castlemain*: Pray excuse me, said he, I had rather go an hundred Miles than go by his door.

L. C. J. Whereas *Dangerfield* says, He had this Discourse in *August*, Mrs. *Cellier* says in *June* or *July*, this day twelve-month particularly she gave him a Letter, and he said, Pray excuse me; I would go an Hundred Miles for you; but I would not go into my Lords Company again if I could help it.

Prisoner, My Lord, Mr. *Dowdal* can tell it.

L. C. J. Did he acknowledg to you my Lords anger in the beginning of *July*?

Dowdal, It was within a week after the Jesuits died.

L. C. J. I don't know that.

Dowdal, It was about the Twenty first of *June*.

L. C. J. Here are two Witnesses, one saies in *June* or the beginning of *July*; says Mrs. *Cellier*, this day twelve-month, he came and told me my Lord was extreamly angry with him. And she would afterwards have had him carried a Letter: But he said, Pray excuse me, I would go an hundred miles, but he would not go again to him if he could help it. And *Dowdal* says he told him about that time of my Lords anger with him.

Att. Gen. Hold your tongue, Mr. *Dangerfield*.

J. Raymond, What Jesuits?

Dowdal, The five Jesuits.

Prisoner, If you please, my Lords, I would only tell you this. My Lords, you see that these two Witnesses testify, that I was angry with Mr. *Dangerfield*, in *June*, My Lords, I only say this to you, that when I was Examined at the Council before the King of this Particular, my Lord Chancellour asked him the Particulars of it, and he did confess this thing which I now prove. Now my Lords, I inferr this, if I was so angry with him for offering to go to the *Tower* when he went to the *Tower* in my Name———

L. C. J. That they have said, that you were very angry.

Dowdal, *Dangerfield* told me so, that he was angry about his going to the *Tower* in my Lords Name unknown to him.

L. C. J. Here are two Witnesses to prove, that my Lord

was

was angry with him for going to the *Tower* in his name, and they both testify he was extreamly high and refused to carry a Letter to my Lord; and yet he says in *August* following he had this Discourse.

Prisoner, I have now only one thing to say, what hath past between Mr. *Oates* and Mr. *Dangerfield*.

L. C. J. Do it as near as you can.

Sir *F. W.* We have some other Evidence to answer this.

Att. Gen. If your Lordship please, we will call two or three Witnesses to Prove the Point. First to prove this last thing, that we have been in my Lords company later than my Lord speaks of.

L. C. J. He says *August*.

Att. Gen. We will prove after that time, that is the time that pinches us.

Prisoner, My Lady *Powis* is in Court, will you hear her?

Lady *Powis*, My Lord, I never did send a Letter by Mr. *Dangerfield* to any body in my life, nor I never read a Letter in Mr. *Dangerfields* presence, nor never had him so much in my company to read a Letter or any tittle to him.

L. C. J. I will tell you Gentlemen, what he says, Mr. *Dangerfield* swears he carried a Letter from my Lady *Powis* to my Lord *Castlemain*, and there was an answer brought back, and that, that answer of my Lord *Castlemains* was read before him, and (you will do well to call Mrs. *Cellier* in again) my Lady *Powis* doth deny that she ever sent a Letter by him to my Lord *Castlemain*, or any body else, by him in her life; or that she ever communicated any Letter to him: This is apt Evidence, this is the truth of it; for it answers directly to what he says against my Lord *Castlemain*.

[Sir *Richard Barker*.

L. C. J. What say you, Sir *Richard Barker*, can you give any account of *Oates*? When was Mr. *Oates* in Town? What time that you know of?

Sir *R. B.* My Lord, I remember we were once upon this before your Lordship. *L. C. J.* In 78?

Sir *R. B.* Yes my Lord, the Evidence that I gave, my Lord, was only this, that my servants told me that Mr. *Oates* had been at my house: It was before Whitsontide, in *May* 78

L. C. J. Did you see him then? When was it you saw him?

Sir *R. B.* My Lord, I saw him after.

L. C. J. How long after?

Sir *R. B.* My Lord, it was about the latter end of *June*.

L. C. J. He says to his own knowledg he saw him in *June*.

Att. Gen. But we have his servants here too, *Phillip Page*, and *Cecily Mayo*.

L. C. J. Do you hear, Mrs *Cellier*, was there any Letter sent by my Lord *Castlemain* to my Lady *Powis*, that was read before you and *Dangerfield*? Mrs. *Cellier*, No my Lord.

L. C. J. Here are two witnesses, my Lady says there is no such thing, and Mrs. *Cellier* says it.

Prisoner, There is another thing, that is, The teaching the Scholars at St. *Omers*, that I taught the Scholars their Lessons.

— *Turner.*

Sollic. Gen. Pray inform my Lord and the Jury, what time it was you saw Mr. *Dangerfield* at my Lord *Castlemains*.

L. C. J. What Month can you charge your self to say, you saw *Dangerfield* in my Lord *Castlemains* company.

Turner, I can't say just the time.

L. C. J. Might it be *August*?

Turner, I can't well tell, I think it might be about *July*.

J. Raymond, Why do you think so?

L. C. J. You are not asked to accuse your self in any thing, but when you saw them together.

Turner, I was coming down stairs, my Lord.

J. Raymond, You don't tell when it was.

L. C. J. Tell us whether you can tell or no: If you are doubtful, say you are doubtful; but speak the truth.

Turner, I can't be positive.

L. C. J. It might be in *June*, or *July*, or *August*, but you think *July*?

Turner, Yes, Sir.

Sir *F. W.* The sooner it is after that the Evidence is, the better against it.

Att. Gen. Madam, I think your Ladiship says you never sent a Letter by *Dangerfield*?

Lady Powis, Yes, Sir.

Att. Gen, Nor did you never receive any Notes from him?

Lady Powis, I have received some Notes from Mrs. *Cellier*, which were his Writing. *L. C. J.*

L. C. J. But did you ever receive a Letter from my Lord *Caſtlemain*?

Lady Powis, Never, my Lord.

—— *Woodman*.

J. Raymond, What do you ſay, Mr. *Atturney*?

Att. Gen, Heark you, *Woodman*, were you ſent with any Letter?

Woodman, To whom?

Att. General, To my Lord *Caſtlemain*, or any body?

Woodman, I was ſent with one Letter, it was Mrs. *Celliers*, my Lord.

L. C. J. To whom?

Woodman, To my Lord *Caſtlemain*; as I remember, my Lord, I took it from Mrs. *Celliers* Daughter.

Att. Gen. Did you ever receive any money of my Lord *Caſtlemain*?

Woodman, Yes, my Lord.

L. C. J. What was it? How much was it?

Woodman, About Three Pounds or Thirty Shillings, I believe.

L. C. J. How do you believe it?

Woodman, To the beſt of my thoughts it was.

Att. Gen. Was it for *Dangerfield*?

Woodman, My Lord I don't know that.

L. C. J. Have you any more?

Solic. Gen. My Lord I have this to ſay to prove Dr. *Oates* was in *London* in *April* 78.

L. C. J. He doth not deny but he might be here too.

Priſoner, I don't diſpute it, my Lord, I have only this one word more. It is not of Treaſon, but it is againſt my Reputation; becauſe this man, before your Lordſhip, I think hath accuſed me of it; and I think, my Lord, I ſhall give you very good ſatisfaction: that is, that the boys that came from St. *Omers* were not inſtructed and taught by me. Now if you pleaſe, my Lord, to give me leave to ſhew it, I have done. Look, my Lord, the thing that I can ſay, is this, Mr. *Littcott*.

J. Raymond, You ſee he ſaid it was morally impoſſible.

Priſoner, Pray my Lords.

J. Raymond, I will undertake you will ſay it is time loſt.

L. C. J.

L. C. J. I would ſtay ſome time to obſerve to the Jury what I have taken notice of with all my heart, but I ſhould be gone.

Priſoner, I have done my Lord, I would not ſay any thing to diſguſt any body.

L. C. J. Gentlemen of the Jury, I will deliver my Obſervations in this Cauſe as I would in any Cauſe, to the beſt of my Underſtanding, and will make thoſe Obſervations that are as Natural as I know how to do; and proper for you to take notice of. It is in vain to diſpute what my Lord ſtands indicted of: It is for atttempting to murder the King, and change our Government and our Religion. To prove this, there hath been Two Witneſſes only that are material, and that is Mr. *Oates* in the firſt place, and Mr. *Oates* his Evidence, the Sum of it is to be reduced———

L. C. J. Mr. *Atturney*, do you ſtand up to ſpeak any thing?

Att. Gen. If your Lordſhip pleaſes, we will Sum up the Evidence for the King, not to offend your Lordſhip.

L. C. J. If you would be ſhort, Mr. *Atturney*, we would not hinder you of any thing.

Att. Gen. I'll be very ſhort.

If it pleaſe your Lordſhip, and you Gentlemen of the Jury, My Lord *Caſtlemain* is here charged with High Treaſon. The proof that we have againſt him is by two Witneſſes, that is, Dr. *Oates* and Mr. *Dangerfield*. Mr. *Oates* he doth ſwear this, namely, That after the Conſult (for I will bring it in ſhort) that after the Conſult that was for killing the *King* and altering the *Government*, my Lord *Caſtlemain* being acquainted with it at Mr. *Fenwick's* Chamber, did hope it good ſucceſs, and that he ſhould come to be reveng'd. Mr. *Dangerfield* he hath proved, That being treated with to kill the *King*, and having refuſed to do it, my Lord *Caſtlemain* was very angry with him for it; and ſaid, *Why wan't you do that for which you were taken out of Priſon?* Here are two Witneſſes expreſs. What is ſaid againſt Mr. *Oates* ſignifies nothing. As to Mr. *Dangerfield* there are ſome Exceptions, which we muſt confeſs to be true; but he is a Witneſs, and my Lord, ſuch matters are to be expected to be proved by ſuch Witneſſes: for if a man will diſcover Robberies, he muſt go to ſuch perſons as do ſuch things; and if Treaſons, it muſt be among them

them that have been employed in such things. Though he were a dishonest man before, yet he may be honest now. He was never guilty of any Treason but as he was employed amongst them. There are some Witnesses brought to encounter him, and one is my Lady *Powis*, who, as he says, sent him with a Letter to my Lord *Castlemain*; but she says she did never send a Letter by him: And others say he would never come at my Lord *Castlemain* after he was angry, which was in *June*. Now for that, Gentlemen, you do hear *Turner* say, That in *July* or *August*, for he can't tell which, he thinks it might be *July*, he saw *Dangerfield* at my Lord *Castlemains*; so that that encounters that Evidence.

L. C. J. If Mr. Atturney had not interrupted me, I would not have left out any thing of this nature; for I would be certainly careful, where the Kings life lies at Stake. I would be sure to preserve my Sovereign above all things, and therefore no man ought to think that I should be partial in a Cause wherein our Religion and the Life of the King and the Government is in danger. But I must say on the other side, That there should be good competent Proofs of these things against those accused, because their Lives and Fortunes, and Honours, and all are at stake. And so, Gentlemen, we shall discharge our Consciences to the best of our understandings, and deal uprightly on both hands.

For the Case it stands thus, It is truly observed by Mr. Atturney, That there are but two material Witnesses to the Charge of this Indictment, that is to say, Mr. *Oates* and *Dangerfield*. Mr. *Oates* his Testimony is in two things, the one close, the other is more remote. That more remote, is, That he had a Letter to send to my Lord *Castlemain*, which he gave to the Provincial to send it, and as he says, he saw a Letter subscribed *Castlemain*, and that afterwards by seeing him write a Superscription, he could recollect the Character so well, that he believed that to be his hand which he saw in *Spain* among the Jesuits, or the Fathers, as they call them there, to whom they communicated that Letter; wherein he mentioned the general Design, that is, the bringing in Popery; which is the bringing in the Catholick Religion, as they call it. That is more remote. He says there were Letters past between them, wherein my Lord approved of some things and disapproved of others, which related to the Design; by which, says Mr. *Oates*, we meant the whole Matter and Transaction of Killing the King; and that doth appear by that Letter he saw of my Lord *Castlemains*, for that annexes to Design the advancing the Catholick Religion. The first time he saw him, he did not know who he was, and there, at *Wild house*, he says, That my Lord *Castlemain* should drop out some words which were suspicious, and one thing as if he understood something of this matter that they had then in agitation.

But more particularly, he says, That when he came to *Fenwick's* Chamber, there was the great matter. They talk'd before but of the Design in general, at *Wild house*; but afterwards meeting in *Lincolns-Inn Fields*, where he was told who he was, they went to *Fenwick's* Chamber, where they fell a discoursing about several things that related to the Concern, and at last they fell upon the matter in hand, and said, They were glad to see the Fathers so unanimous in this matter. I asked about what matter? He said, The Killing of the King and bringing in Popery: To which he says, That my Lord should make Answer, He wished them good success in their Design, and that then he should be revenged. This is the substance of what Mr. *Oates* says: Against whose Testimony, I must tell you there hath been but little. There is but little thrown upon Mr. *Oates* by way of disgrace and infamy. For that Verdict that the Jury found against his Evidence, it is not material; for then every man must be accused, when the Jury does not go according to the testimony he gives. It is not to be denied, but there is something said against him in another particular, and that is his coming over from St. *Omers*, where he says that Mr. *Hilsley* came over with him in the Pacquet Boat, but Mr. *Hilsley* denies it. Mr. *Oates* would have salved it, by saying he left him at St. *Omers*. 'Tis true, says Mr. *Oates*, but I overtook him afterwards: but he says to the point, that he came not with him. Now it is not denied on the other hand, but Mr. *Oates* might be here, and my Lord of *Castlemaine* seems to admit it, and it is probable enough Mr. *Oates* might be here. This is all I remember in reference to Mr. *Oates*. You must weigh well with your selves how probable or not probable, what he does swear is. But I must tell the Jury they are to weigh the natures of people among themselves, as they carry probability or not, or else the confidence of a Swearer shall take away any man's life whatsoever. And to that that Mr. *Oates* says first, I understand not how he should be so free, Mr. *Oates* being a Stranger to him, when he knew not my Lord, and doth not know whether my Lord knew him or no. But he says, my Lord must needs see the Jesuits trusted him, and that might make him more confident: That afterwards going to *Fenwick's* House, he spake broader, in plain English. They were talking of a Design to kill the King and bring in the Catholick Religion, and Mr. *Oates* says, he wished them good success in the Design, and that then he should be revenged. How far this Oath is to be taken or not, I must leave to your Consideration.

The next is Mr. *Dangerfield*, for nothing infamous is proved against Mr. *Oates*. *Dangerfield* is a man of whom there is enough. You see what Crimes there are; for it is the Duty of every Judge, and I can't see how he can discharge his Conscience, and the Duty he ows to the Government, in respect of his Oath and Place, if he doth not make those just Observations to the Jury which are done in all Cases: That is to say, when men have contracted great Crimes upon themselves, though by Law they may be Witnesses; yet it hath always been observed, and their Credit left to them to consider of.

You

You see how many Crimes they have produced, a matter of six great enormous Crimes; and by them you will see how far you ought to consider his testimony. Had Mr. *Dangerfield* been guilty only of being concern'd in the Treason, and come in as a Witness, I should have thought him a very competent Witness; for that is Mr. *Oates* his Case: but they prove Crimes of another sort and nature, and whether the man of a sudden be become a Saint, by being become a Witness, I leave that to you to consider; and how far you are satisfied in the main.

The next thing is the opposition to his Testimony. He hath sworn that he carried a Letter from my Lady *Powis* to my Lord *Castlemain*, and an Answer return'd back from my Lord to her, and that my Lady *Powis* did read it in the presence of Mrs. *Cellier* and him. Of this my Lady *Powis* hath been asked (it is true they are not upon their Oaths, but that is not their fault, the Law will not allow it) and my Lady *Powis* hath affirmed to it, as much as lay upon her to do, that she never sent a Letter by Mr. *Dangerfield* to my Lord *Castlemaine*, nor any Body else. And whereas he says Mrs. *Cellier* was present, she says, she knows of no such Letter, nor was any read in her company. And this is a contradicting his Evidence, supposing him to be a man otherwise untouch'd. And whereas *Dangerfield* says that in *August* he was with my Lord, and he said, How chance you would not do that thing for which you were brought out of Prison? *What? would you have me kill the King? Yes*, saith he, *that it is*. And my Lord speaking very angrily and very roughly, made him think it time to with-draw out of his company, and never come into his company more; and that this was the time of his anger, and no other time; my Lord rather complementing him, as he would say, with friendly salutations. But they produce Witnesses against this. Says Mrs. *Cellier*, this day Twelve-month, and says t'other about a week after the Jesuits were executed, which was about the beginning of *July*, saith she, I would have you carry a Letter to my Lord *Castlemain*: Saith he, I would not do that, I would go an Hundred miles upon another Errand, but I would not go to him. Another Witness says, my Lord was mighty angry with him, and told him the cause, because he went in his Name to the Lords in the *Tower*. First, This contradicts what he said, as if there had been no anger before. The next is, That it is very improbable that my Lord should be angry with him so much, that my Lord should be very angry with him for going in his Name to the *Tower*, and afterwards for his refusing to kill the King; when he said, *Why did you not do that you came out of Prison for? What, my Lord, to kill the King? Yes, that.* This is an Argument in opposition to his Testimony.

The next is a Consideration for his Testimony, *Turner* says in answer to that, In *July* he takes it, but cannot charge himself, whether *June*, or *July*, or *August*; but he himself thinks *July*; that he saw him at the Lord *Castlemain*'s House. And the Kings Council would gather from that, there could not be such an unwillingness to go

before

before that time, it being after the time they ſpeak of, that this man ſaw him there. Whether or no it was in *June*, or *July*, or *Auguſt*, is ſomething uncertain. So that I have repeated as near as I can all that is ſubſtantial on either part, and I have according to the beſt of my underſtanding dealt fairly on both ſides; and obſerved to you what hath been ſworn againſt my Lord, and what hath been ſaid in contradiction to what they ſwear; and what appears upon Record, as to *Dangerfield*.

There is a great deal of difference between Mr. *Oates* his Teſtimony and Mr. *Dangerfield's*; for you may believe one, when you may perchance not believe another. There are not thoſe things caſt upon Mr. *Oates* that are upon Mr. *Dangerfield*. Now I muſt tell you, though they have produced two, if you believe but one, I think (if ſo be my Brethrens Opinions be otherwiſe, I would be very willingly contradicted in this matter) if two Witneſſes are produced, both ſpeaking materially to the thing, the one is believed and the other not, Whether upon theſe two Witneſſes the Jury can find a Perſon Guilty, or no? I am of Opinion it is but one Witneſs, if you don't believe one; and I am ſure one is not ſufficient to find one Guilty; and therefore if ſo be you are of another Opinion, let us deal fairly and above-board; that it may appear we deal rightly between the King and his Subjects, and ſo preſerve men that are accuſed and not guilty.

J. Jones, I think in the firſt place, my Lord hath very faithfully delivered the Evidence; and I do think it neceſſary, in a Caſe of Treaſon, That there muſt be Two Witneſſes believed by the Jury.

J. Raymond, I never heard any man queſtion it. If the Law ſays, There muſt be Two Witneſſes produced, it ſays, They muſt be both believed.

L. C. J. Now you have our Senſe of it.

[*The Jury went from the Bar and returned.*]

Cler. of the Crown, Are you all agreed of your Verdict?

Jury, Yes.

Clerk of the Crown, Who ſhall ſpeak for you?

Jury, The Foreman.

Clerk of the Crown, *Roger Palmer* Eſq; Earl of *Caſtlemain* in the Kingdom of *Ireland*, Hold up thy hand, look upon the Jury.

Clerk of the Crown, Is *Roger Palmer* Eſq; Earl of *Caſtlemain* in the Kingdom of *Ireland*, Guilty of the High Treaſon whereof he ſtands Indicted, or not Guilty?

Jury, Not Guilty.

Clerk of the Crown, This is your Verdict, You ſay he is not Guilty, ſo you ſay all?

Jury, Yes.

FINIS.